



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Locke Property Mgmt.  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **CNC, LRE**

### **Introduction**

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to Sections 47 and 62 of the Act; and,
2. An Order to suspend or set conditions on the Landlord's right to enter the rental unit pursuant to Section 70 of the Act.

The hearing was conducted via teleconference. The Landlord's Property Manager and Trainee, MD and CA, attended the hearing at the appointed date and time and provided affirmed testimony. The Tenant did not attend the hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference. The Landlord was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Landlord that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Landlord testified that they were not recording this dispute resolution hearing.

The Landlord personally served the One Month Notice on March 1, 2022. The Property Manager's Trainee witnessed service of the One Month Notice on the Tenant on March 1, 2022. I find that the One Month Notice was served on the Tenant on March 1, 2022 pursuant to Section 88(a) of the Act.

The Landlord confirmed that they were personally served by the Tenant with the Notice of Dispute Resolution Proceeding package for this hearing sometime after March 21, 2022 (the "NoDRP package"). I find that the Landlord was served with the NoDRP package for this hearing on March 22, 2022, in accordance with Section 89(1)(a) of the Act.

### Issues to be Decided

1. Is the Tenant entitled to cancellation of the Landlord's One Month Notice?
2. If the Tenant is unsuccessful, is the Landlord entitled to an Order of Possession?
3. Is the Tenant entitled to an Order to suspend or set conditions on the Landlord's right to enter the rental unit?

### Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Landlord confirmed that this periodic tenancy began on October 1, 2020. Monthly rent is \$1,065.00 payable on the first day of each month. A security deposit of \$525.00, and pet damage deposit of \$525.00 were collected at the start of the tenancy and are still held by the Landlord.

The One Month Notice stated the reason why the Landlord was ending the tenancy was because the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property; and the tenant has failed to comply with a material term and has not corrected the situation within a reasonable time after the landlord gives written notice to do so. The effective date of the One Month Notice was March 31, 2022.

The Landlord provided further details of the causes to end this tenancy as:

*February 1, 2, 15, 16, 22, 23, 24, 26, 27/2022:*

*Tenant has created disturbances to all surrounding tenants, including banging/slamming doors, screaming, yelling, throughout the nights beginning early evening to the very early hours of the morning.*

*These have been ongoing incidents with documented dates and times over months including written notices to the tenant.*

MD testified that the Landlord received 11 complaints from other tenants from November 20, 2021 to January 25, 2022. At that point, the Landlord wrote the Tenant a letter requesting them to cease yelling, screaming, and slamming their patio sliding door. From January 25, 2022 to March 1, 2022, the Landlord received an additional 10 complaints from other tenants. On February 28, 2022, the incident involved the Tenant wielding a knife. The Landlord, who is new to managing this property, was not sure if the police were called during this particular incident. MD stated that the Tenant's patio door, on two occasions, required repairs. The Landlord issued the One Month Notice. After issuing the One Month Notice, the Landlord stated they received 9 more complaints, of which 5 of them police attended the residential property. The Tenant has assaulted the tenant who lives directly above her.

The Landlord states that the Tenant is breaching a conduct provision in their tenancy agreement, and she is disrupting the quiet enjoyment of the other tenants in the building. The breach letter issued to the Tenant contained a summary of the complaints from the other tenants, and the Landlord demanded the Tenant cease the offending behaviour immediately. The letter further stated that a failure to follow the conduct provision in the tenancy agreement may result in an eviction notice.

The Landlord is seeking an Order of Possession for the rental unit.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

This hearing was conducted pursuant to RTB Rules of Procedure 7.3, in the Tenant's absence, therefore, all the Landlord's testimony is undisputed. Rules of Procedure 7.3 states:

***Consequences of not attending the hearing:*** *If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.*

Section 47 of the Act is the relevant part of the legislation in this application. It states:

***Landlord's notice: cause***

**47** (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*

...

(d) *the tenant or a person permitted on the residential property by the tenant has*

(i) *significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*

...

(h) *the tenant*

(i) *has failed to comply with a material term, and*

(ii) *has not corrected the situation within a reasonable time after the landlord gives written notice to do so;*

...

(2) *A notice under this section must end the tenancy effective on a date that is*

(a) *not earlier than one month after the date the notice is received, and*

(b) *the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*

(3) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*

(4) *A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.*

...

The One Month Notice was served on the Tenant on March 1, 2022. Section 53 of the Act enables incorrect effective dates to automatically change. As the One Month Notice was dated and served on March 1, 2022, then the effective date for the One Month Notice is corrected to April 30, 2022 pursuant to Section 53(2) of the Act. After the corrected effective date, I find the One Month Notice complies with the form and content requirements of Section 52 of the Act. The Tenant applied for dispute resolution on March 10, 2022, which is within the 10-day time period specified in Section 47(4) of the Act.

Residential Tenancy Policy Guideline #8 deals with material terms of tenancy agreements. It states that a material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. I must assess the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. To end a tenancy agreement for breach of a material term the Landlord must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and,
- that if the problem is not fixed by the deadline, the party will end the tenancy.

I find based on the Landlord's undisputed testimony that the conduct of the Tenant has significantly interfered with or unreasonably disturbed other occupants or the Landlord of the residential property. The Landlord stated they issued a breach letter to the Tenant on January 25, 2022; however, they demanded that the disruptive behaviour cease *immediately*. I do not find that 'immediately' is a reasonable deadline to give any Tenant and if their One Month Notice only specified this one cause, the One Month Notice would fail. The Landlord's second cause is that the Tenant has significantly interfered with or unreasonably disturbed other occupants of the residential building. The number of incidents testified to by the Landlord are significant. Police being called to the residential property to deal with the Tenant's disruption is an unreasonable disturbance, and as noted earlier, I find the Landlord has proven on a balance of probabilities that the Tenant's conduct is a significant interference with or unreasonable disturbance in the residential property for the other occupants as well as the Landlord. I dismiss the Tenant's entire application to cancel the Landlord's One Month Notice and the Tenant's

application seeking an Order to suspend or set conditions on the Landlord's right to enter the rental unit without leave to re-apply.

As the Tenant was not successful in her application, I must now consider if the Landlord is entitled to an Order of Possession. Section 55(1) of the Act reads as follows:

***Order of possession for the landlord***

- 55** (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*
- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*
  - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

I find that the One Month Notice submitted into documentary evidence complies with Section 52 of the Act and I uphold the Landlord's One Month Notice. I grant an Order of Possession to the Landlord which will be effective two (2) days after service on the Tenant.

**Conclusion**

The Tenant's application for dispute resolution is dismissed, and the Landlord is granted an Order of Possession pursuant to Section 55(1) of the Act, which will be effective two (2) days after service on the Tenant. The Order of Possession may be filed in and enforced as an Order of the British Columbia Supreme Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: May 30, 2022

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Residential Tenancy Branch