



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Galatia Realty Inc./Villa Paulina  
Apts. and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **CNC, FFT**

### **Introduction**

This hearing dealt with the Tenants' 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. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's Manager, BK, and EK attended the hearing at the appointed date and time and provided affirmed testimony. The Tenants 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 he was not recording this dispute resolution hearing.

The Landlord served the Tenants with the One Month Notice on January 28, 2022 by posting the notice on the Tenants' door. The Landlord uploaded a Proof of Service #RTB-34 form attesting to service of the One Month Notice. I find the One Month Notice was deemed served on the Tenant on January 31, 2022 according to Sections 88(g) and 90(c) of the Act.

The Landlord confirmed that they received the Tenants' Notice of Dispute Resolution Proceeding package for this hearing by using a permitted email address for service purposes on February 23, 2022 (the "NoDRP package"). I find that the Landlord was served with the NoDRP package on February 23, 2022, in accordance with Section 43(2) of the *Residential Tenancy Regulation*.

The Tenants uploaded evidence for this matter on the RTB portal, but did not serve their evidence on the Landlord. The Tenants' evidence, due to non-service on the Landlord, will not be considered in this matter.

The Landlord served the Tenants with their evidence via Canada Post registered mail on May 9, 2022. The Landlord referred me to the Canada Post registered mail tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. I find that the Landlord's evidence was deemed served on the Tenants on May 12, 2022 pursuant to Sections 88(c) and 90(a) of the Act.

#### Issues to be Decided

1. Are the Tenants entitled to cancellation of the Landlord's One Month Notice?
2. If the Tenants are not successful, is the Landlord entitled to an Order of Possession?
3. Are the Tenants entitled to recovery of the application filing fee?

#### 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 tenancy began as a fixed term tenancy on September 1, 2015. The fixed term ended on August 31, 2016, then the tenancy continued on a month-to-month basis. Monthly rent is \$1,118.00 payable on the first day of each month plus \$25.00 per month for covered parking. A security deposit of \$512.50 was collected at the start of the tenancy and is still held by the Landlord.

The One Month Notice stated the reason why the Landlord was ending the tenancy was because the Tenant has seriously jeopardized the health or safety or a lawful right or interest of another occupant or the landlord, has put the landlord's property at significant

risk, and the tenant has failed to comply with a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. The effective date of the One Month Notice was February 28, 2022.

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

*Tenant [name] no longer lives in the rental unit and has left his younger brother [name] who is a occupant to reside in the suite. Who has Constant Breaches of the Tenancy, Caution Dated Oct-01-21 also Oct-14-21 -a uninsured for on-road vehicle parked on the property. Caution Dated Oct-01-21 Has had many guest in and out staying in the unit throughout Covid . Over the Christmas Holidays- The latest incident Putting the Landlords property at risk, [name] & guest's had a fire going out side the building and the fire department was called. Notice of complaint from tenant to follow. Caution July 19 & 27 /2021 Blocking the back door open on many occasions, putting the Landlords property at risk. Complains from tenants dated June19th,July, 11th, 18 & 19th/2021*

On July 11, 2021, the Landlord notified the Tenant that on numerous occasions they have propped open the backdoor to the building. Once the back door was propped open with a file, and a second instance, on July 18, 2021, the back door was propped open with the end of a broom. On one occasion the Landlord found someone sleeping in the building who does not reside there. The Landlord maintains that the Tenant is the only person who leaves this door open.

The Landlord testified that on December 19, 2021, the fire department was dispatched to the residential property as one Tenant and friends had started a fire in a BBQ grill in the undercover parking area for the building in another tenant's parking spot. Another tenant wrote that, "*They were chopping logs of wood in the covered parking area, I also saw a charcol bbq against the wall beside the parking spot where the red car parks ... They continued to use a jerry can of gasoline.*" The fire department told the Tenant and his friends to put the fire out and the fire department left. The Tenant and his friends tried to get the fire going again after the fire department left.

The Landlord specified the requirement to have any vehicles parked on the residential property need to be currently licensed, Section 20 of the tenancy agreement states:

***Vehicles.*** Only vehicles listed in the tenancy application and no other vehicles may be parked, but not stored, on the residential property. Vehicles must not leak fluids and must be in operating condition, currently licensed, and insured for on-road operation. Motor vehicle or other repairs must not be done in the rental unit or on the residential property. (emphasis mine)

On September 29, 2021 and October 1, 2021, the Landlord notified the Tenants that they were breaching a material term of their tenancy agreement by having a vehicle without proper insurance parked in the parking lot on the residential property.

Another occupant wrote a letter to the Landlord dated approximately January 6, 2022 stating,

*Many times, since moving into the [named building], I have been woken up in the middle of the night by sounds of fighting verbally and physically. Primarily on the weekends, but quite a few during the week as well, for hours on end.*

*I work and need my sleep, if this continues to happen, I may have to move due to lack of sleep.*

The Landlord stated that the Tenant has parked his car in the parking area and it does not have insurance. This kind of situation is against fire regulations as cars need to be insured to drive out of the parking area if needed.

The Landlord asserted that the Tenant gathers outside with a gang of friends and this intimidates some of the female occupants of the building. The Landlord stated that they feel fearful to walk past this group of men to enter the building.

The Landlord is seeking an Order of Possession.

### 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 Tenants' 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*

...

(ii) *seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or*

(iii) *put the landlord's property at significant risk;*

...

(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;*

...

...

(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 Tenants were deemed served with the One Month Notice on January 31, 2022. The One Month Notice complied with the form and content requirements of Section 52 of the Act. The Tenants applied for dispute resolution on February 9, 2022 within the 10 days after receipt of the One Month Notice.

RTB Policy Guideline #8 - Unconscionable and Material Terms states that a Landlord can end a tenancy agreement if a material term of that agreement has been breached. The Guideline states:

*To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – 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.*

*Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem. (emphasis mine)*

The Landlord gave evidence that one Tenant is parking his vehicle with no insurance or insufficient insurance on his car. The tenancy agreement does specify that cars must be adequately insured for road purposes. I find though that the Landlord did not provide the Tenant with a reasonable deadline when the problem must be fixed. The Landlord has not proven, on a balance of probabilities, that the Tenants were informed about a reasonable deadline when the breach must be fixed. I find the Landlord has not proven cause of a breach of a material term that must be fixed within a reasonable deadline.

The Landlords submitted that on numerous occasions the Tenants have left a back door propped open from which they have found non-resident people sleeping in the halls. The Landlord testified to one Tenant and his friends starting a wood fire in a charcoal bbq stand in the undercover parking area of the residential building. Another tenant

witnessed them using a jerry can of gasoline to get the fire started. The fire department was called for this situation and they told the Tenant and his friends to put the fire out. Other occupants of the building have reported sounds of verbal and physical fighting happening mostly on the weekends, but also sometimes during the week. This impacts the occupants sleep who has to go to work in the morning. I find the Landlord has proven, on a balance of probabilities, that the Tenants have seriously jeopardized the health or safety or a lawful right or interest of another occupant or the landlord, and have put the landlord's property at significant risk. The Tenants did not attend this hearing to provide evidence about their tenancy and I dismiss their application to cancel the Landlord's One Month Notice without leave to re-apply.

I must consider if the Landlord is entitled to an Order of Possession. Section 55 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 previously found that the Landlord's One Month Notice complied with Section 52 of the Act, and I uphold the Landlord's One Month Notice. The Landlord is granted an Order of Possession which will be effective two (2) days after service on the Tenants.

**Conclusion**

The Landlord is granted an Order of Possession, which will be effective two (2) days after service on the Tenants. The Landlord must serve this Order on the Tenants as

soon as possible. The Order of Possession may be filed in and enforced as an Order of the Supreme Court of British Columbia.

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: June 10, 2022

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Residential Tenancy Branch