



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HENNE FAMILY TRUST and  
[tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      CNC

### Introduction and Preliminary Matters

On February 25, 2022, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”).

This hearing was scheduled to commence via teleconference at 11:00 AM on June 7, 2022.

R.W. attended the hearing as an agent for the Landlord, with J.T. attending the hearing later as a witness for the Landlord. However, the Tenant did not make an appearance at any point during the 42-minute teleconference. At the outset of the hearing, I informed the parties that recording of the hearing was prohibited and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

R.W. confirmed the legal names of the Tenant and the Landlord, and the Style of Cause on the first page of this Decision has been amended to reflect these corrections.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a Decision or dismiss the Application, with or without leave to re-apply.

I dialed into the teleconference at 11:00 AM and monitored the teleconference until 11:42 AM. Only agents for the Landlord dialed into the teleconference during this time. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I confirmed during the hearing that the Applicant did not dial in, and I

also confirmed from the teleconference system that the only parties who had called into this teleconference were agents for the Landlord.

As the Tenant did not attend the hearing, her Application has been dismissed without leave to reapply.

R.W. advised that the Landlord's evidence was served to the Tenant by registered mail on May 31, 2022, and he confirmed that the Tenant signed for this package on May 31, 2022. Based on this undisputed testimony, as the Landlord's evidence was served late and not in accordance with the timeframe requirements of Rule 3.15 of the Rules of Procedure, I have excluded this evidence and will not consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that is compliant with the *Act*.

#### Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

R.W. advised that the tenancy started on October 15, 2020, that rent was currently established at \$850.00 per month, and that it was due on the 31<sup>st</sup> day of each month. A security deposit of \$425.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

He then advised that the Notice was served to the Tenant by posting it to the door and by putting another copy under the door on February 25, 2022, despite the Notice being signed and dated for March 25, 2022. He submitted that this incorrect date was a typographical error. The reason the Landlord served the Notice is because the "Tenant has allowed an unreasonable number of occupants in the unit/site/property/park." The Notice indicated that the effective end date of the tenancy was March 31, 2022.

He testified that the Tenant and her daughter were the only people permitted to occupy the one-bedroom rental unit. He stated that the Tenant's sister and common-law boyfriend were observed moving furniture into the rental unit on or around February 22, 2022. He advised that J.T. confronted the sister and common-law boyfriend, and they acknowledged that they were moving into the rental unit. He stated that he warned the Tenant verbally about these people not being allowed to move in, but the Tenant constantly denied that they were living there. He was of the belief that these two people were moving in to live there as they had recently been evicted from another property that he managed. He submitted that they lived there from February to May 2022.

J.T. advised that he observed these people moving furniture into the rental unit at 3:00 AM on or around February 22, 2022. He stated that he confronted them the next morning and the Tenant denied that they had moved in. However, it is his belief that they had been living there for months. He submitted that he would observe these people coming and going for months and that other residents of the building would complain about the noise that these occupants would constantly make. While he could not remember due to his age, he believed that these occupants stated to him that they were moving in when he confronted them.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Despite dismissing the Tenant's Application because she did not attend the hearing, I must still consider the validity of the Notice.

In considering this matter, I have reviewed the Landlord's Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. While the Notice indicates that it was signed and dated on March 25, 2022, given that the Tenant disputed this Notice on February 25, 2022 and submitted it as part of her documentary evidence package, I am satisfied that this was a typographical error on the part of the Landlord and that it was served on February 25, 2022, as per R.W.'s testimony. As such, I have amended the Notice pursuant to Section 68 of the *Act* to correct this date. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52 and I find that it is a valid Notice.

I find it important to note that Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part as follows:

***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:*

*(c) there are an unreasonable number of occupants in a rental unit;*

Based on the undisputed testimony before me, the Tenant moved two extra occupants into the one-bedroom rental unit for a period of over two months, despite the Landlord's warnings that this was an unreasonable number of adults living in the rental unit given its size. As such, I am satisfied that there is sufficient evidence before me to support the issuance of this Notice.

Consequently, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 47 and 55 of the *Act*. As the Tenant's Application was dismissed in its entirety as well, there are multiple reasons that an Order of Possession is granted to the Landlord that takes effect on **June 30, 2022 at 1:00 PM** after service on the Tenant.

Conclusion

The Tenant's Application is dismissed without leave to reapply.

The Landlord is provided with a formal copy of an Order of Possession effective on **June 30, 2022 at 1:00 PM** after service on the Tenant. Should the Tenant or any occupant on the premises fail to comply with this Order, this Order may be filed 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 *Residential Tenancy Act*.

Dated: June 8, 2022

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Residential Tenancy Branch