



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CHECKMATE PROPERTIES  
LTD. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, OLC

### Introduction

This hearing first convened on April 12, 2022 and was adjourned to June 7, 2022 because neither party provided a complete copy of the One Month Notice to End Tenancy for Cause into evidence. No testimony on the merits of the claim were heard in the April 12, 2022 hearing. This Decision should be read in conjunction with the April 12, 2022 Interim Decision.

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

- cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47; and
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:40 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlord's property manager, and the landlord's agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The agent and property manager called two witnesses, L.W. and E.K., who provided affirmed testimony.

I also confirmed from the teleconference system that the tenant did not call into this teleconference.

The landlord's property manager, agent and witnesses were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute

resolution hearings. The landlord's property manager, agent and witnesses testified that they are not recording this dispute resolution hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

The landlord confirmed their email address for service of this decision and order.

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*.

#### Issues to be Decided

1. Is the tenant entitled to cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47 of the *Act*?
2. If the tenant's application is dismissed or the One Month Notice to End Tenancy for Cause is upheld and the notice complies with section 52 of the *Act*, is the landlord entitled to an Order of Possession, pursuant to section 55 of the *Act*?

#### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the property manager and agent, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the property manager and agent's claims and my findings are set out below.

The landlord provided the following undisputed testimony. This tenancy began on July 15, 2019 and is currently ongoing. Monthly rent in the amount of \$867.00 is payable on the first day of each month. A security deposit of \$425.00 was paid by the tenant to the landlord.

The agent testified that on January 5, 2022 a One Month Notice to End Tenancy for Cause (the "Notice") was posted on the tenant's door. The tenant's application for dispute resolution states that the Notice delivery date was January 5, 2022. The tenant applied to cancel the Notice on January 14, 2022. The Notice was entered into evidence by the landlord between the first and second hearings, in accordance with the Interim Decision. The Notice:

- is signed and dated by the landlord's agent,
- gives the address of the rental unit,
- states the effective date of the Notice is February 5, 2022, and
- is in the approved form of RTB Form #33.

The One Month Notice states the following reasons for ending the tenancy:

- Tenant has allowed an unreasonable number of occupants in the unit/site.
- Tenant or a person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord;
  - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
  - put the landlord's property at significant risk.
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
  - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant;
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.
- Tenant has assigned or sublet the rental unit/site without the landlord's written consent.

The agent testified that the tenant was served with the Notice because other tenants and the property manager complained about the conduct of the tenant and the conduct of guests permitted on the property by the tenant.

The property manager testified that the tenant and his guests do illegal drugs inside and outside of the subject rental property and leave used needles and other drug paraphernalia all over the place and inside the laundry room. The property manager testified that she installed cameras because of the issues with the tenants and that the tenant's guests spray painted some of the cameras and cut some of the wires, but that they did not damage all of the cameras and the vandalism was recorded.

Witness L.W. testified that she is a tenant at the subject rental building and also cleans the subject rental building. Witness L.W. testified that another tenant was telling her in the hallway that her disabled son's bike had been stripped for parts in the storage room. Witness L.W. testified that as she and the other tenant were talking in the hallway, the tenant came into the building, and they asked him about the stripped bike. Witness L.W. testified that the tenant initially denied that he stripped the bike, but then admitted that the parts were upstairs, and that he would fix the bike. Witness L.W. testified that the tenant never fixed the bike.

Witness L.W. testified that she has seen needles and drug paraphernalia in the laundry room, left by the tenant's guests. Witness L.W. testified that the tenant admitted to her that he let in the people who left the above items in the shared laundry room.

Witness E.K. testified that he is a tenant in the subject rental building and lives below the tenant. Witness E.K. testified that he can't sleep at night because of all the fighting and banging that goes on in the tenant's apartment.

### Analysis

Rule 7 of the Residential Tenancy Branch Rules of Procedure provides in part as follows:

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. 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.

The tenant failed to attend this hearing. Pursuant to Rule 7 of the Residential Tenancy Branch Rules of Procedure, I dismiss the tenant's application without leave to reapply.

I accept the agent's undisputed testimony that the Notice was posted on the tenant's door on January 5, 2022. This is supported by the tenant's application which states the delivery date as January 5, 2022. I find that the tenant was deemed served on January 8, 2022, three days after its posting, in accordance with sections 88 and 90 of the *Act*.

Section 47(1) of the *Act* states:

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

- (a) the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;
- (b) the tenant is repeatedly late paying rent;
- (c) there are an unreasonable number of occupants in a rental unit;
- (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,

- (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;

- (e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

- (i) has caused or is likely to cause damage to the landlord's property,

- (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

- (iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

- (f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;

- (g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) *[obligations to repair and maintain]*, within a reasonable time;

- (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;

(i)the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 *[assignment and subletting]*;

(j)the tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property;

(k)the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;

(l)the tenant has not complied with an order of the director within 30 days of the later of the following dates:

(i)the date the tenant receives the order;

(ii)the date specified in the order for the tenant to comply with the order.

I accept the undisputed testimony of the agent, the property manager and the witnesses.

I find that the tenant and or guests of the tenants have left drug paraphernalia and used needs in and around the subject rental building. I find that the discarded needles left the by the tenant and or the tenant's guests seriously jeopardizes the health or safety or lawful right or interest of the landlord and other tenants as used needles can carry pathogens. I find that the tenant breached section 47(1)(d)(ii) of the *Act*.

I find that stripping a disabled occupant's bike for parts constitutes a significant interference and unreasonable disturbance of that occupant and is patently wrong. I find that the tenant breached section 47(1)(d)(i) of the *Act*.

As I have determined that the tenant breached sections 47(1)(d)(i) and 47(1)(d)(ii) of the *Act*, I find that the Notice is valid and I uphold the Notice.

Section 55 of the *Act* states that 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:

- the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
- the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Upon review of the Notice, I find that it meets the form and content requirements of section 52 of the *Act*.

Since I have dismissed the tenant's application, upheld the Notice and have found that the Notice meets the form and content requirements of section 52 of the *Act*, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*.

### Conclusion

The tenant's application is dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenant**. Should the tenant 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 07, 2022

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Residential Tenancy Branch