



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC

### Introduction

This hearing dealt with the Landlord's application under the *Residential Tenancy Act* (the "Act") for an Order of Possession under a One Month Notice to End Tenancy for Cause dated January 24, 2022 (the "One Month Notice") pursuant to sections 47 and 55.

The Landlord's agent JO attended the hearing. JO was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. During the hearing, the Landlord called SW as a witness. SW was given an opportunity to present affirmed testimony.

The Tenant did not attend this hearing. I left the teleconference hearing connection open until 1:40 pm in order to enable the Tenant to call into the hearing scheduled to start at 1:30 pm. I confirmed that the correct call-in numbers and participant access code had been provided in the notice of dispute resolution proceeding. I used the teleconference system to confirm that JO and I were the only ones who had called into the hearing.

I advised JO that the Residential Tenancy Branch Rules of Procedure prohibit unauthorized recordings of dispute resolution hearings. JO confirmed he was not recording this dispute resolution hearing.

### Preliminary Matter – Service of Dispute Resolution Documents

JO stated he served the Tenant with the notice of dispute resolution proceeding package and supporting documentary evidence (the "NDRP Package") by registered mail on March 10, 2022. The Landlord submitted a Canada Post registered mail receipt with a tracking number in support. That Canada Post tracking number is referenced in

the cover page of this decision. Based on the above, I find that the Tenant has been served with the NDRP Package in accordance with sections 88 and 89 of the Act. I further find that pursuant to section 90(a) of the Act, the Tenant is deemed to have received the NDRP Package on March 15, 2022.

### Issue to be Decided

Is the Landlord entitled to an Order of Possession?

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

The Landlord submitted a copy of the parties' tenancy agreement into evidence. JO confirmed the particulars of the tenancy as follows:

- The tenancy commenced on November 1, 2013 and is currently month-to month.
- Rent is \$1,146.00 per month, due on the first day of each month. The Tenant pays \$375.00 per month and the rest is paid by BC Housing.
- The Tenant paid a security deposit of \$300.00, which is held by the Landlord.

A copy of the One Month Notice is included in the Landlord's submitted evidence. The One Month Notice is dated January 24, 2022 and has an effective date of February 28, 2022. The One Month Notice states the following details of cause:

- (a) you have significantly interfered with or unreasonably disturbed another occupant of the residential property or the landlord;*
- (b) you have seriously jeopardized the health or safety or a lawful right or interest of another occupant or the landlord;*
- (c) you have failed to comply with a material term of your tenancy agreement and have not corrected the situation within a reasonable time after receiving written notice to do so.*

*Please see attached Letter with more details: Attached*

The Landlord submitted a copy of the letter attached to the One Month Notice. This letter is dated January 24, 2022 and contains the following excerpts:

*On January 12, 2022, at around 9 pm a female tenant of the building reported to staff that you had assaulted her in her suite apartment two days earlier. The tenant reported that you had attempted to touch her and when she told you to stop and to leave her apartment, you proceeded to strip down to your underwear and physically assault her. She also stated that you attempted to get on top of her, but she was able to restrain you. She reported that when she loosened her grip after you had promised to leave, you bit her on the breast hard enough to leave bruising. This incident was reported to the [dispute city] Police who attended and took statements – [police] file number 22-5850. The [police] returned sometime later and served you with a “Promise to Appear” in court and conditions which included a requirement that you stay away from the alleged victim.*

*On January 13, 2022, around 6:30 p.m. you were observed by staff in a common area of the building walking past this same tenant multiple times, intimidating and “leering” at her, and causing her significant distress. The [dispute city] Police were called again and attended the building at approximately 9:15 p.m. until 9:55 p.m. Ultimately, you were arrested that evening and taken from the building in custody of the [police]. A new [police] file number was issued for this attendance – 22-6345.*

In addition, the Landlord submitted documentary evidence including:

- a written statement from SW, the complainant in the above-described incidents;
- numerous video stills taken from security cameras in the building common area on January 13, 2022, showing the Tenant's confrontation of SW; and
- a Release Order from the Court regarding the Tenant, which contains a term prohibiting contact or communication with SW.

During the hearing, the Landlord called SW to testify as a witness. SW gave testimony to confirm the events described in the Landlord's letter dated January 24, 2022 and in her written statement.

PO confirmed he served the Tenant with a copy of the One Month Notice on January 25, 2022, both in person and by registered mail. The Landlord submitted a Proof of Service in form #RTB-34, which contains a signed witness statement from DJG. The Landlord also submitted a Canada Post registered mail receipt dated January 25, 2022, with tracking number RN559148708CA.

The Tenant has not made an application to dispute the One Month Notice. JO confirmed the Tenant is still residing in 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.

Sections 47(1)(d)(i), 47(1)(d)(ii), and 47(1)(h) of the Act state 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:

[...]

(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, [...]

[...]

(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; [...]

In this case, I find that the Landlord has established cause for issuing the One Month Notice to end the tenancy under sections 47(1)(d)(i) and 47(1)(d)(ii) of the Act.

I accept SW's testimony and the Landlord's documentary evidence to find, on a balance of probabilities, that the Tenant physically assaulted SW in her unit on January 11, 2022. I further find that the Tenant continued to communicate with and harass SW in the building's common area, including the incident on January 13, 2022, contrary to the conditions stipulated in the Tenant's Release Order. I find that by engaging in such behaviour, the Tenant has significantly interfered with and unreasonably disturbed SW, who is another occupant of the residential property. I further find that as a result of the attack, the Tenant has seriously jeopardized the health and safety of SW. Accordingly, I

am satisfied that the Landlord has demonstrated cause for issuing the One Month Notice.

In light of the above, I find it is unnecessary for me to further consider whether the Landlord has also established cause for ending the tenancy under section 47(1)(e) of the Act.

Having been satisfied that there was cause, I now turn to the matter of the One Month Notice itself. 47(3) of the Act requires that a notice to end tenancy for cause comply with section 52 of the Act, which states:

**Form and content of notice to end tenancy**

- 52 In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
  - (b) give the address of the rental unit,
  - (c) state the effective date of the notice,
  - (d) except for a notice under section 45(1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
    - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
  - (e) when given by a landlord, be in the approved form.

I have reviewed the One Month Notice and find that it complies with the requirements of section 52 in form and content.

I accept PO's undisputed testimony and the Landlord's signed Proof of Service to find that the Tenant was served with a copy of the One Month Notice in person on January 25, 2022, in accordance with section 88 of the Act.

Section 47(4) of the Act permits a tenant to dispute a one month notice to end tenancy for cause within 10 days after receiving such notice. Therefore, the Tenant had until February 4, 2022 to dispute the One Month Notice. In this case, the Tenant did not apply to dispute the One Month Notice by February 4, 2022 or at all.

Section 47(5) of the Act states that if a tenant who has received a notice under section 47 does not make an application for dispute resolution in accordance with section 47(4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

Furthermore, section 55(2)(b) of the Act states as follows:

**Order of possession for the landlord**

55 [...]

(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

[...]

(b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired; [...]

I find that, pursuant to section 47(5) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the One Month Notice, which is February 28, 2022.

Accordingly, I find the Landlord is entitled to an Order of Possession pursuant to section 55(2)(b) of the Act.

Since the effective date of the One Month Notice has already passed, I grant an Order of Possession to the Landlord effective two (2) days after service of the Order upon the Tenant.

Conclusion

I grant an Order of Possession to the Landlord effective two (2) days after service upon the Tenant. The Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that 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 *Residential Tenancy Act*.

Dated: June 24, 2022

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Residential Tenancy Branch