



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding NANAIMO AFFORDABLE HOUSING  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **CNC**

### **Introduction**

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

The hearing was conducted via teleconference. The Landlord's Agents, the Tenant, and Tenant's Advocate attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

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

The Landlord served the Tenant with the One Month Notice on February 18, 2022 by posting the notice on the Tenant's door. The Tenant confirmed receipt of the One Month Notice. I find the One Month Notice was deemed served on the Tenant on February 21, 2022 according to Sections 88(g) and 90(c) of the Act.

The Tenant confirmed that she personally served the Landlord with the Notice of Dispute Resolution Proceeding package for this hearing on March 12, 2022 (the "NoDRP package"). The Landlord confirmed receipt of the NoDRP package. I find that the Landlord was served with the NoDRP package for this hearing on March 12, 2022, in accordance with Section 89(1)(a) of the Act.

The Landlord served the Tenant with their evidence via Canada Post registered mail on May 27, 2022. The Tenant confirmed that she received the evidence when she picked it up at the Landlord's office. 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. Canada Post tracking indicates that the package was delivered on June 15, 2022. I find that the Landlord's evidence was served on the Tenant on June 15, 2022 pursuant to Section 88(c) 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 not successful, is the Landlord entitled to an Order of Possession?

### 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 parties confirmed that this periodic tenancy began on December 1, 2019. Monthly rent is \$529.00 payable on the first day of each month. A security deposit of \$371.00 was collected at the start of the tenancy.

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 of the tenancy agreement, 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:

*The guests and tenants of [address] have progressively & significantly interfered with or unreasonably disrupted another occupants. Apr.22/21 & Feb.15/22 2-3 dogs are there on a regular basis off leash, Jan.21/22, dogs doing their business in the common areas, Oct.19/21, Nov.29/21 & Dec. 17/21 vehicle of guest recklessly speeding and squealing tires through*

*complex as he comes and goes. Due to the escalating complaints, we have no choice but to issue a 30-day notice.*

The Landlord relies on several letters that were issued to the Tenant which they submit support them issuing the One Month Notice on the Tenant. The subject of the letters follow:

DATE	SUBJECT OF LETTER
April 22, 2021	2 Pitbulls there on regular basis; barking all morning. Breaches S. 20-Tenant Conduct
October 19, 2021	Occupant woken up by Tenant's guest speeding through complex; guest left with screeching tires.
November 29, 2021	Several complaints about male tenant who resides in your unit revving his engine every morning as he leaves for work.
December 17, 2021	Male who lives in rental unit - revving his engine so loud in the parking lot for about 5 minutes before ripping out of here ... neighbours were even outside telling him to stop, and he kept going. Breaching others' right to Quiet Enjoyment  You are the only adult listed in your tenancy agreement. A long-term, unregistered adult, who has not declared their income with the society is a violation of your tenancy agreement.
January 17, 2022	After a monthly inspection of the rental unit, although more organized, it still does not meet the level of sanitary and health levels we expect from our tenants. Breaches S. 11-Repairs(a)-Tenant's obligations
January 21, 2022	Guests letting their dogs out in back yard directly behind your unit to use as their toilet. Breaches S. 15-Occupants and Guests & S. 17-Use of Common Areas
February 14, 2022	Dangers of leaving trash in bags at door for several days ... with rat and mice problem that is already existing ... and it is smelly. Breaches S. 11-Repairs(e)
February 15, 2022	Visits by guests with banned dogs. Tenant is responsible for actions of guests. Breaches S. 15 & 17 of Tenancy Agreement. Tenant reminded of letter delivered on January 21, 2022.

The Landlord stated after they started doing the monthly inspections, they did not see improvements with the state of the Tenant's rental unit. They have noticed the Tenant and her house guest moving items out of the Tenant's rental unit when the monthly inspections are due to happen. On January 17, 2022, the Landlord wrote the Tenant that there was a problem with the state of the rental unit *'not meeting the level of*

*sanitary and health levels we expect from our tenants'. The Landlord stated that another inspection would happen in one month. The letter stated, "[t]his letter will serve as another warning and a reminder of your responsibilities as a tenant with [society]. ... As this is an ongoing problem, and if the levels of sanitation are not met during the next inspection, we will have no choice by to take the next steps in enforceable action."*

The Landlord states the Tenant is not allowed pets and they notified the Tenant that dogs are not allowed to visit her rental unit two weeks before they issued the One Month Notice. On February 15, 2022, the Landlord's letter reminded the Tenant, "*the dogs are no longer welcome on the property, not on leash and not inside your unit.*" The Landlord testified that their addendum states dogs have to be on a leash in the common areas, and are restricted if the animal unreasonably disturbs or poses a health risk. The Landlord said the dogs defecating on the residential property poses a health risk for their occupants and were restricted.

The Tenant testified that they were allowed to have dogs with visitors. She stated she received a notice that the dogs were banned one or two weeks before receiving the One Month Notice. The Tenant states there is dog feces in common areas of the residential property, and it did not come from her best friend's dogs. The Tenant maintained that her friend's dogs are never at the residential property all day, that they are well behaved, but now they do not come to her home anymore.

The Tenant said the male guest is her ex-boyfriend. She said she told him he is not to come to her home, and that was why he was screeching his tires in the parking area. She said he has bail conditions that include a no contact order and do not allow him to come to her rental unit.

The Tenant likes to shop at thrift shops, and recently she had a car accident and had to take things out of her car. She was not moving these items because of the monthly inspections of her rental unit.

The Tenant stated she does not remember leaving her garbage outside her front door for days on end. She asserts that this is not something she does regularly.

### 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. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

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 Tenant was deemed served with the One Month Notice on February 21, 2022. I find the Landlord's One Month Notice complies with the form and content requirements of Section 52 of the Act. The Tenant applied for dispute resolution on March 1, 2022 which was within 10 days after receiving 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.*

The January 17, 2022 letter from the Landlord to the Tenant stated there was a problem with the condition of the rental unit '*not meeting the level of sanitary and health levels we expect from our tenants*'; however, whether this was considered a material term or not was unclear. The Landlord stated that another inspection would happen in one month. The Landlord did not testify that this sanitary/health level problem was not fixed, and they did not point me to a further written notice that they allege the problem continues. I find that the Landlord has not met their burden on a balance of probabilities that the Tenant has breached a material term of the tenancy agreement and has not proven cause to end the tenancy in this regard.

Sections 28 and 32 of the Act state:

***Protection of tenant's right to quiet enjoyment***

**28** *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*

- (a) reasonable privacy;*
- (b) freedom from unreasonable disturbance;*
- ...*
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.*

***Landlord and tenant obligations to repair and maintain***

**32** *(1) A landlord must provide and maintain residential property in a state of decoration and repair that*

- (a) complies with the health, safety and housing standards required by law, and*
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.*

*(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.*

*...*

The Landlord's allegations of banned dogs on the property, a guest's dogs defecating behind the Tenant's rental unit, occupants being disturbed by the Tenant's male guest revving his car engine in the parking area, and leaving trash outside on the front door step of the rental unit are more concerning. The Landlord must protect tenants' rights to quiet enjoyment, freedom from unreasonable disturbance and use of common areas free from significant interference. This includes all the tenants. Landlords and tenants also have obligations to maintain the residential property up to certain reasonable health standards. The issues with the dogs have been longstanding and I find the Tenant continued to allow the dogs onto the property and into her rental unit even after being told they were no longer welcome on the property. The Tenant stated she does not regularly leave garbage outside her unit; however, I find the Tenant has, at least on one occasion, done this and the Landlord wrote the Tenant up on it. The Tenant's Advocate stated the Tenant had to take thrift shop items out of her car because the Tenant had a car accident; however, the Landlord testified that the Tenant and her guests were

moving things into her car before the monthly inspections happened. I find that the Tenant was moving items out of her rental unit prior to the inspections to assist the Tenant to have a clear inspection and as of January 17, 2022, the condition of the rental unit was not passing sanitary/health levels set by the Landlord. I find that the Tenant, or a person permitted on the residential property by the Tenant has significantly interfered with or unreasonably disturbed other occupants and the Landlord of the residential property. I find the Landlord has proven on a balance of probabilities cause to end this tenancy and I dismiss the Tenant's application to cancel the Landlord's One Month Notice.

As the Tenant failed in her application, I must 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 previously found that the One Month Notice submitted into documentary evidence complies with Section 52 of the Act. Based on the testimonies of the parties, I dismissed the Tenant's application and upheld 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, 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 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: July 05, 2022

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Residential Tenancy Branch