# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the Tenant's application under the *Residential Tenancy Act* (the "Act") to dispute a One Month Notice to End Tenancy for Cause dated February 22, 2022 (the "One Month Notice") pursuant to section 47.

The Tenant, the Tenant's counsel, the Landlord's counsel, and the Landlord's agents SV and MB attended this hearing. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. During this hearing, the Landlord called two additional witnesses, NS and MN.

The parties were advised that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Service of Dispute Resolution Documents

The Landlord's counsel did not raise any issues with respect to service of the notice of dispute resolution proceeding package or the Tenant's initial documentary evidence.

The Landlord's counsel objected to additional evidence received from the Tenant's counsel on June 13, 15 and 22, 2022 (collectively, the "Additional Evidence"). The Landlord's counsel argued that the Additional Evidence was served late and is not relevant.

Rule 3.14 of the Rules of Procedure states that documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent not less than 14 days before the hearing. In this case, the deadline for the Landlord to receive the

Tenant's Additional Evidence was June 9, 2022. I find that the Tenant's Additional Evidence was not received by the Landlord in accordance with Rule 3.14.

However, Rule 3.14 further states that if a piece of evidence is not available when the applicant submits and serves their evidence, Rule 3.17 applies.

I understand based on the Tenant's counsel's submissions that the Additional Evidence, which consists of a bank draft from the Tenant dated June 10, 2022, a letter from the Tenant's psychiatrist dated June 21, 2022, and an undated letter from the Tenant's counsellor, were not available when the Tenant made this application or served the initial documentary evidence.

Rule 3.17 of the Rules of Procedure permits evidence not provided to the other party in accordance with Rule 3.14 to be considered if the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence. The arbitrator also has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above, provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.

For reasons to be explained below, I find that the Tenant's Additional Evidence may be relevant for the purpose of an analysis under section 47(1)(d)(ii) of the Act. I note that the Additional Evidence is very brief, and the Landlord's counsel has acknowledged receipt. During the hearing, the Landlord did not seek an adjournment under Rule 7.8 to review the Additional Evidence. I am satisfied that an adjournment will not be necessary in the circumstances. In any event, I am satisfied that by admitting the Additional Evidence, the Landlord will not be unreasonably prejudiced and there will not be a breach of the principles of natural justice. Accordingly, I allow the Additional Evidence to be admitted pursuant to Rule 3.17.

The Tenant's counsel did not raise any issues with respect to service of the Landlord's documentary evidence.

Issues to be Decided

1. Is the Tenant entitled to cancel the One Month Notice?

2. If the Tenant is unsuccessful in cancelling the One Month Notice, is the Landlord entitled to an Order of Possession?

Background and Evidence

This tenancy commenced on April 15, 2019. The rental unit is part of a multi-unit building that provides affordable housing at below market rent. A copy of the tenancy agreement has been submitted into evidence.

The incident giving rise to this application relates to an assault that took place at the rental property on February 4, 2022. On February 22, 2022, the Landlord issued the One Month Notice to end tenancy for cause, which provides the following details (portions redacted for privacy):

> *On the evening of February 4, 2022, [the Landlord's] staff received a complaint that you had physically assaulted another tenant in the front lobby, a common area of the building, at approximately 5:45 p.m. The other tenant was advised to call 911 to report the incident. The [dispute city] Police Department attended the building and provided the [police] file number [redated] for the incident.*
>
> *Upon review of the video surveillance footage from the security cameras at the front entrance and in the main lobby of the building, you were observed following another tenant into the building, then pushing her into the wall from behind as she stood waiting for the elevator. You then threw items at her, tried to wrestle a package out of her hands, pushed her into the elevator when the door opened, and then threw more items at her until the elevator door closed. The Property Manager contacted you on Monday, February 7, 2022 to try to obtain your side of the story, but you advised that on the advice of your lawyer you were not going to provide any information.*

The Landlord's counsel confirmed that copies of the One Month Notice were posted to the Tenant's door and sent to the Tenant via registered mail on February 22, 2022. The tracking number of the Landlord's registered mail package is referenced on the cover page of this decision. The Landlord submitted a signed #RTB-34 Proof of Service document in support.

The Landlord submitted two video recordings containing security camera footage of the area outside the building's front door and inside the building lobby. These videos were reviewed in detail during the hearing.

The Landlord called NS to testify as a witness. NS stated she is 61 years old and has lived in the building since 2019. NS recounted under oath the events of February 4, 2022 and her interaction with the Tenant at the building lobby.

NS testified she did not provoke the Tenant. NS stated when she approached the building entrance, "there was no acknowledgement" of her presence by the Tenant. NS stated the Tenant had not stopped what she was doing. NS stated she carefully entered and did not disturb the Tenant. NS testified that contrary to the Tenant's affidavit, the Tenant had not asked NS to wait. NS stated she was worried she may have bumped the Tenant with her parcel, but she knows that was not the case after having reviewed the security footage.

When asked to describe how she feels knowing the Tenant still lives in the building, NS testified that she is anxious, continues to be "terrorized by the assault", and avoids leaving her unit unless her son is with her.

NS confirmed she received the Tenant's apology letter as part of the Tenant's evidence for this hearing, and later again from a parole officer. NS stated that the Tenant's letter "tried to minimize" what happened, when in fact the Tenant had pushed NS suddenly, called NS derogatory names including use of profanity, and prevented NS from going home. NS testified that the apology letter did not make her feel better.

The Landlord also called the building caretaker, MN, as a witness. MN stated he received a text message from NS on February 4, 2022, asking him to come see her. MN testified that NS told him she had been assaulted in the lobby. MN testified that NS asked to see the security camera footage and they reviewed the footage together. MN confirmed he told NS to call the police, and that he later spoke with police officers who came to his door. The Landlord's evidence includes a written statement from MN to the police.

One of the Landlord's agents, MB, testified that half of the units in the rental building are reserved for another non-profit organization whose focus is on enhancing the quality of life for individuals with mental illnesses. MB stated the remaining units are "normal RTA" apartments for individuals who do not need support services but need quality,

affordable, and safe housing at below market rent. MB confirmed the rental unit is one of the “normal RTA” units.

MB further explained that there is an income requirement in order to live in the rental building. MB stated that the Landlord does not intend to re-rent the Tenant’s unit at a higher rate. MB testified that the Landlord’s mandate is to provide safe, quality affordable housing at below-market rents. MB testified that the Landlord’s tenants include particularly vulnerable individuals, and that the Landlord has a zero-tolerance policy for violence.

The Landlord’s counsel emphasized that the evidence shows a violent and unprovoked assault had occurred on the rental property. The Landlord’s counsel argued that evidence relating to the Tenant’s character is irrelevant and the issue of the Tenant’s likelihood of re-offending is beyond the jurisdiction of the Residential Tenancy Branch. The Landlord’s counsel submitted that the task for the arbitrator is to determine whether there has been cause warranting eviction (e.g. an unreasonable disturbance) under section 47 of the Act. The Landlord’s counsel submitted that given the Tenant admits to the assault, the police found the assault serious enough to make an arrest, and the Crown pressed charges, it would be sufficient for an arbitrator to make a finding of unreasonable disturbance under section 47 of the Act.

In response, the Tenant’s counsel argued that an emphasis on the past is a misrepresentation of the law relating to evictions. The Tenant’s counsel argued that the purpose of the Act is to ensure that going forward, the property will be managed properly, safely, and efficiently. The Tenant’s counsel stated that the Act is not meant to be punitive legislation.

The Tenant’s counsel submitted that the Tenant was going through unusual stress relating to a stressful job and the death of the Tenant’s father. The Tenant’s counsel submitted that it is highly relevant that the Tenant has taken steps since the incident, such as reducing the demands of the Tenant’s job and getting appropriate treatment. The Tenant’s counsel stated that what happened was an isolated incident and will not reoccur. The Tenant’s counsel highlighted the fact that the Tenant had previously been a resident of the building for almost 3 years without complaint, had voluntarily written an apology letter to NS before the alternative measure terms were submitted and imposed, and had paid restitution of $1,250.00 to NS.

The Tenant's counsel referred to a letter from the Tenant's counsellor that expressed an opinion for low probability of future occurrence. The Tenant's counsel also referenced a letter from the Tenant's psychiatrist, in which it is mentioned that the Tenant has been receiving treatment, with adjusted medication, and that the Tenant's mood is stable.

The Tenant's counsel stated that due to the Tenant's financial situation and the fact that the Tenant has a pet, it will be almost impossible to find comparable accommodation.

The Tenant's counsel argued that the language in section 47 of the Act is broadly worded and gives the Residential Tenancy Branch broad discretion as to whether the circumstances justify eviction. The Tenant's counsel argued that the arbitrator is entitled to look at the overall circumstances of the tenancy, and that this is one isolated incident which is not serious enough to justify eviction. The Tenant's counsel argued that the Crown had determined it would be appropriate to refer the Tenant to alternative measures, given the Tenant's background, lack of previous record, and low likelihood of re-offending, and that the arbitrator should undertake a similar analysis.

The Tenant submitted copies of affidavits from the Tenant and the Tenant's mother, the letter of apology to NS, a bank draft of the restitution paid to NS, and letters from the Tenant's counsellor and psychiatrist.

In reply, the Landlord's counsel argued that the Tenant's position is misinterpreting section 47, which does not have any future-looking language. The Landlord's counsel argued that whether a person has significantly interfered with or unreasonably disturbed another requires looking to the incident which has already happened, rather than to hypothetical events. The Landlord's counsel submitted that the assault is serious enough to end the tenancy. The Landlord's counsel further submitted that the Landlord is not pursuing this eviction to be punitive. The Landlord's counsel emphasized the Landlord's zero-tolerance policy for violence, as well as the fact that the victim is still haunted and traumatized and will not feel safe until the Tenant is gone.

Analysis

*1. Is the Tenant entitled to cancel the One Month Notice?*

Section 47 of the Act permits a landlord to end a tenancy for cause upon one month's notice to the tenant. Section 47(1) describes the situations under which the landlord will have cause to terminate the tenancy.

Section 47(3) of the Act requires a notice to end tenancy for cause given by the landlord to comply with section 52, 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.

Section 47(2) further requires that the effective date of a landlord's notice under section 47 must be:

(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.

In this case, the One Month Notice is dated February 22, 2022 and has an effective date of March 31, 2022. I have reviewed the One Month Notice and find that it complies with the requirements set out in sections 52 and 47(2) of the Act.

Based on the Landlord's evidence, I find the Tenant was served with the One Month Notice in accordance with sections 88(c) and 88(g) of the Act. Pursuant to section 90(c) of the Act, I find the Tenant is deemed to have received the One Month Notice on February 25, 2022.

Section 47(4) of the Act permits a tenant to dispute a one month notice to end tenancy for cause within 10 days of receiving such notice. Therefore, the Tenant had until March 7, 2022 to dispute the One Month Notice. Records indicate that the Tenant submitted this application on March 4, 2022. I find the Tenant made this application within the 10-day dispute period required by section 47(4) of the Act.

The standard of proof in this 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.

In this case, the Landlord has issued the One Month Notice to end the tenancy on two grounds:

1. Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
2. Tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

Sections 47(1)(d)(i) and (ii) 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, […]

I agree with the Landlord's position that the language in section 47(1)(d)(i) of the Act is written about an action in the past tense, and that the likelihood of re-offense is not relevant under this section.

However, the likelihood of re-offense may be relevant to an assessment of risk in subsection (d)(ii) and other parts of section 47(1), such as subsections (d)(iii) and (e).

Although section 47(1)(d)(ii) also uses the past tense, it seems possible for the serious jeopardy to be ameliorated by the tenant after the fact. In *Senft v. Society For Christian Care of the Elderly*, 2022 BCSC 744, the Supreme Court of British Columbia found that the post-notice conduct of the tenant was a relevant consideration for the arbitrator when determining whether an eviction was necessary and justified. In that case, the Court determined the fact that the tenant later cleaned up the rental unit was relevant to an assessment of whether the tenant's conduct placed other occupants or the landlord's interests at risk.

In this case, the issue of whether the assault had occurred is not in dispute. Based on the Landlord's evidence, including the security camera footage, NS's testimony, and the fact that charges were pressed, I am satisfied on a balance of probabilities that the Tenant has significantly interfered with and unreasonably disturbed NS within the meaning of section 47(1)(d)(i) of the Act. I find that the assault was violent, unprovoked, and therefore sufficiently serious to warrant an end to the tenancy. Accordingly, I find that the Landlord has established caused for ending the tenancy under section 47(1)(d)(i).

Given that I have already found the Landlord to have established cause under section 47(1)(d)(i), I do not find it is necessary for me resolve whether the Tenant has seriously jeopardized the health or safety or lawful right of other occupants in the building or the Landlord under section 47(1)(d)(ii), which in my view would require a more detailed analysis of the Tenant's post-notice conduct and likelihood to re-offend. I do find on the evidence that the Tenant has taken substantial steps towards taking responsibility for her actions and has been seeking help since the incident.

In making these findings, I am mindful of the protective purpose of the Act, and that it is a statute which "seeks to confer a benefit or protection upon tenants" (*Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator),* 2007 BCSC 257 at para. 11). However, I note that in this case NS is also a tenant, and that her right to quiet enjoyment under section 28 of the Act, including freedom from unreasonable disturbance and use of common areas for reasonable and lawful purposes free from significant interference, has been undeniably breached. I accept NS's testimony that she continues to feel anxious and terrorized knowing that the Tenant still resides in the building.

Therefore, having considered and weighed all of the evidence before me, I conclude that the Landlord has established, on a balance of probabilities, cause for ending the tenancy under section 47(1)(d)(i) of the Act. I find that the Tenant has significantly

interfered with and unreasonably disturbed NS, another occupant of the rental property, by virtue of the assault which took place on February 4, 2022.

Accordingly, I dismiss the Tenant's application to dispute the One Month Notice, without leave to re-apply.

*2. Is the Landlord entitled to an Order of Possession?*

Section 55(1) of the Act states:

**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.

Having found the One Month Notice to comply with the requirements of section 52 and having dismissed the Tenant's application, I find the Landlord is entitled to an Order of Possession pursuant to section 55(1) of the Act.

As 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

The Tenant's application is dismissed without leave to re-apply.

Pursuant to section 55(1) of the Act, 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: July 22, 2022

Residential Tenancy Branch