



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC

### Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to section 47.

The landlord attended with his son and agent SS. The landlord called the witness BD who provided affirmed testimony.

The landlord testified that the tenant served him with the Notice of Hearing and Application for Dispute Resolution by registered mail. The landlord submitted written evidence copies of which were provided to the tenant by registered mail sent July 7, 2022. The landlord submitted a copy of the receipt and tracking number.

I find each party served the other party in compliance with the Act.

The tenant did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 25 minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord, his agent, his witness and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant was provided.

The landlord requested to proceed with the hearing.

Order of Possession

I informed the landlord that in the event I dismissed the tenant's application to cancel the Notice issued in compliance with the Act, I was required under section 55 of the Act to grant an order of possession in favour of the landlord.

Section 55 states as follows:

*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.*

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Background and Evidence

The landlord provided uncontradicted testimony as the tenant did not attend the hearing.

The landlord submitted a comprehensive, extensive evidence package. They testified to the background of the tenancy and the present circumstances.

A copy of the tenancy agreement was submitted. The landlord testified that the monthly tenancy began on December 1, 2021. Rent is \$1,600.00 monthly payable on the first of the month.

The tenant provided a security deposit of \$800.00 which the landlord holds.

The landlord stated there were countless complaints about noise regarding the tenant many of which were submitted as evidence. The landlord testified that many complaints involved multiple guests coming and going to the unit throughout the night.

The landlord testified that many strata fines have been levied against the tenant for noise.

The witness BD provided affirmed testimony that he is the tenant's neighbor and "the biggest victim". He testified to "terrible noise" from the tenant's unit which including yelling, vulgar language, and sounds of aggression. He has made 11 formal complaints about the tenant copies of which were submitted..

The landlord testified they gave eight written letters of warning to the tenant to no avail. The persistent noise and disturbance continued unabated.

The landlord testified they issued a One Month Notice dated March 26, 2022. A copy was submitted which is in the RTB form. The agent SS testified he posted the One Month Notice to the tenant's door on March 26, 2022. The grounds are:

1. The tenant has allowed an unreasonable number of occupants in the unit
2. Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord
3. Tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord

The Notice includes the following statement from the landlord which he testified is true:

[the tenant] is disturbing neighbouring units with loud sounds such as: loud banging, yelling and shouting. On March 7, 2022 the police was called due to loud disturbance. Reportedly, he is very confrontational with other residents, has stolen packages, removed the fire extinguisher from the wall, let strangers into the building and disposed of garbage in the hallways instead of the recycling bin. (as written)

The effective date of the One Month Notice was April 30, 2022.

The One Month Notice included a term that the tenant had the right to dispute the Notice within 10 days, that is, by August 16, 2021.

The tenant filed an Application for Dispute Resolution to dispute the Notice on April 2, 2022, within the timeline. The tenant has failed to attend the hearing of the tenant's application.

The landlord stated the tenant has not paid rent for the month of July 2022 and \$1,600.00 is owing.

The tenant has not vacated the unit. The landlord requested an Order of Possession.

### Analysis

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

Rule 7.3 of the Rules of Procedure provides as follows:

***7.3 Consequences of not attending the hearing – 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 reapply.***

As the applicant did not attend the hearing and in the absence of any evidence or submissions on behalf of the applicant, I order the tenant's application dismissed without leave to reapply.

As the tenant has failed to appear at this hearing or submit any testimony or evidence, I dismiss the tenant's request to cancel the One Month Notice.

Pursuant to section 55(1), 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 and the tenant's application is dismissed.

I determine the landlord's Notice complies with section 52. I have dismissed the tenant's application. I therefore find the landlord is entitled to an order of possession.

Conclusion

I dismiss the tenant's application without leave to reapply. I grant the landlord an Order of Possession effective on 2 days notice. This Order must be served on the tenant. The Order may be filed and enforced in the Courts of the Province of BC.

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

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Residential Tenancy Branch