



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, OLC, FFT

### Introduction

On May 11, 2022, the Tenants applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”), seeking an Order to comply pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Tenant M.K. attended the hearing, and C.L. attended the hearing as an agent for the Landlord. C.L. advised of the correct name of the Landlord, and the Style of Cause on the first page of this Decision has been amended accordingly.

At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that he served the Landlord the Notice of Hearing and evidence package by registered mail on May 20, 2022, and C.L. confirmed receipt of this package. However, she stated that the Tenant did not serve all of his documentary evidence. When the Tenant was asked if he served the Landlord with a two-page handwritten letter that was submitted as documentary evidence, he stated that he did not remember if he served this document or not. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was duly served the Notice of Hearing package. However, with respect to the Tenants’ evidence, I have accepted all of the Tenants’ evidence with the exception of the two-

page handwritten letter. The Tenant was permitted to make submissions regarding the contents of this two-page written letter.

C.L. advised that the Tenants were served with the Landlord's evidence by registered mail on September 2, 2022, and the Tenant confirmed that they received the Landlord's documentary evidence. As the Landlord's evidence was served in compliance with the timeframe requirements of Rule 3.15 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this Decision.

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 complies with the *Act*.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

- Are the Tenants entitled to have the Notice cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Are the Tenants entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the most current tenancy started on August 1, 2018, that rent was owed in the amount of \$1,248.00 per month, and that it was due on the first day of each month. A security deposit of \$600.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

C.L. advised that the Notice was served to the Tenants by being posted to their door on May 6, 2022. The reasons the Landlord served the Notice are because the "Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and seriously jeopardized the

health or safety or lawful right of another occupant or the landlord". The effective end date of the tenancy was noted on the Notice as June 30, 2022.

She then submitted that the Notice was served to the Tenants because of an incident that happened on May 6, 2022, as a result of ongoing parking issues. She testified that the Tenant entered the office, that he was waving his phone and gesticulating wildly, that he was shouting profanities, and that he was acting aggressively. She stated that he would walk away and then return with the same inappropriate and belligerent attitude. She reiterated some of the offensive remarks that the Tenant specifically said to her, and she referenced the documentary evidence submitted to support the Landlord's position of the Tenant's unacceptable and threatening behaviour.

The Tenant confirmed that there was a dispute over a parking issue and that he went to the office on May 6, 2022, in an attempt to gain clarity on this issue. He denied shaking his phone, but was attempting to show her some pictures. He testified that he was "not going to lie", that he did use profane language, and that he "wasn't nice." However, he refuted the submission that he threatened C.L., and it was his position that the Landlord was harassing him. He acknowledged that C.L. warned him that she would call the police after his profane behaviours. He stated that he was not proud of his actions that day and that his behaviours were as a result of being in the "heat of the moment."

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

I have reviewed the Landlord's One Month Notice to End Tenancy for Cause to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52.

I find it important to note that the Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part 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.*

*(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.*

I also find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, I may also need to turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

When reviewing the totality of the evidence, I have before me documentary evidence that supports that the Tenant acted inappropriately and profanely in the office. As well, I have C.L.'s solemnly affirmed testimony of the specifics of what the Tenant stated to her verbally during this confrontation, in addition to her testimony regarding his conduct and his physical actions, which she deemed to be aggressive.

Moreover, I have solemnly affirmed from the Tenant who acknowledged the inappropriate comments that he made. While it is his position that he was not threatening, when I review the totality of the evidence before me, I am skeptical of his portrayal of the events as described. Given that he confirmed that he acted inappropriately and that this prompted C.L. to caution him that she would contact the police if he did not leave, I find it more likely than not that the Tenant acted in a wholly inexcusable and unacceptable manner. I do not find the Tenant's testimony to be compelling or credible. Based on my assessment of the evidence before me, I prefer the Landlord's evidence on the whole. As such, I am satisfied, by the Tenant's actions, that the grounds for ending the tenancy have been justified.

As the Landlord's Notice is valid, and as I am satisfied that the Notice was served in accordance with Section 89 of the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession under Sections 47 and 55 of the *Act*.

The effective end date of the tenancy of June 30, 2022, on the One Month Notice to End Tenancy for Cause is changed to the nearest date that complies with the law. Since that effective date has passed, I grant the Order of Possession effective on **September 30, 2022 at 1:00 PM** after service of this Order on the Tenants.

As the Tenants were not successful in this claim, I find that the Tenants are not entitled to recover the \$100.00 filing fee paid for this Application.

### Conclusion

I dismiss the Tenants' Application for Dispute Resolution without leave to reapply. Furthermore, I grant an Order of Possession to the Landlord effective on **September 30, 2022 at 1:00 PM** after service of this Order on the Tenants. Should the Tenants 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: September 26, 2022

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Residential Tenancy Branch