



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFT, CNC, OLC, MNDCT, LRE, PSF, AAT, LAT

### Introduction

This hearing was convened as a result of the Tenant's application under the *Residential Tenancy Act* (the "Act") for:

- cancellation of a One Month Notice to End Tenancy for Cause dated July 3, 2022 (the "One Month Notice") pursuant to section 47;
- an order that the Landlord comply with the Act, the regulations, or tenancy agreement pursuant to section 62;
- a Monetary Order of \$5,503.77 for the Tenant's monetary loss or money owed by the Landlord pursuant to section 67;
- an order suspending or setting conditions on the Landlord's right to enter the rental unit pursuant to sections 29 and 70(1);
- an order that the Landlord provide services or facilities required by law pursuant to section 65;
- an order for the Landlord to allow access to the rental unit for the Tenant and/or the Tenant's guests pursuant to section 30;
- authorization to change the locks to the rental unit pursuant to section 70(2); and
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72.

The Landlord, the Landlord's agent PA, and the Tenant attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

All attendees at the hearing 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 acknowledged receipt of the Tenant's notice of dispute resolution proceeding package and documentary evidence (collectively, the "NDRP Package"). Based on the Landlord's testimony, I find the Landlord was served with the NDRP Package in accordance with sections 88 and 89 of the Act.

The Tenant denied that she received any evidence from the Landlord. The Landlord testified that a package with the Landlord's documentary evidence was left at the Tenant's door on August 23, 2022 at 5:58 pm. The Landlord testified the Tenant was home at the time but did not open the door. The Landlord testified she had a witness with her and made a video recording. The Landlord testified the Tenant refused to provide an email address, so the Landlord was unable to send her digital evidence to the Tenant. In response, the Tenant testified she has her windows closed due to a neighbour smoking. The Tenant stated she does not always open the door as she is resting and under medication.

I find the Landlord acknowledged that she could not serve her digital evidence on the Tenant. As mentioned during the hearing, digital evidence may also be served by giving or mailing a USB stick to the other party. I find the Landlord did not serve such evidence on the Tenant as required under the Act and the Rules of Procedure. As such, I exclude the Landlord's digital evidence, including videos and audio recordings, from consideration for the purposes of this proceeding.

Given the parties' conflicting testimony regarding service of the Landlord's documentary evidence package, I find it is necessary to consider the credibility of the parties. In *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p.174, the British Columbia Court of Appeal stated that:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

On the issue of service, I find the Landlord's testimony to be credible and consistent with the preponderance of probabilities that a practical and informed person would readily recognize as reasonable in the circumstances. I accept the Landlord's testimony that she left her documentary evidence package at the Tenant's door on August 23, 2022, due to the Tenant not opening the door to take the package. I accept the Landlord's testimony that she made a video recording of the package left at the Tenant's door. I find this explains why the Landlord is able to recall the date, time, and details of the event with precision. I further find the Tenant acknowledged that she does not always open the door when she hears a knock, which is consistent with the Landlord's description of events.

Therefore, I find the Tenant to be sufficiently served with the Landlord's documentary evidence on August 23, 2022 in accordance with section 71(2) of the Act.

#### Preliminary Matter – Severing of Unrelated Claims

Rules 2.3 and 6.2 of the Rules of Procedure state as follows:

##### **2.3 Related issues**

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

##### **6.2 What will be considered at a dispute resolution hearing**

The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application.

The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [*Related issues*]. For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.

(emphasis added)

In this case, I find the most important claim in this application is the Tenant's claim to cancel the One Month Notice. I find that all of the Tenant's other claims, aside from the claim for recovery of the filing fee, to be unrelated to the Tenant's claim to cancel the One Month Notice.

Accordingly, and as discussed during the hearing, I dismiss all of the Tenant's claims, other than the claims to cancel the One Month Notice and to recover the filing fee, with leave to re-apply.

### Issues to be Decided

1. Is the Tenant entitled to cancel the One Month Notice?
2. Is the Tenant entitled to recover the filing fee?
3. 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.

This tenancy commenced on April 1, 2022 and is month-to-month. Rent is \$1,000.00 due on the first day of each month. The Tenant paid a security deposit of \$500.00, which the Landlord holds in trust. A copy of the parties' tenancy agreement has been submitted into evidence.

The rental unit is a basement suite. The Landlord and her family reside in the main area of the house.

Copies of the One Month Notice have been submitted into evidence. The One Month Notice is dated July 3, 2022 and has an effective date of August 6, 2022. The One Month Notice states that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord. The details of cause stated on the One Month Notice are as follows:

*Tenant called 911 and made a false accusation of domestic abuse. June 2, 2022.*

*File # [redacted for privacy]*

*Tenant repeatedly and multiple times per day, rings/knocks on front door while heavily intoxicated repeatedly attempted to confront me while also making false accusations of abuse. - July 1, 2022 / June 29, 2022 / June 27, 2022 / June 26, 2022*

*Repeatedly slammed basement door heavily throughout the day after attempting to confront me, kept slamming the door till 12:30 am. - security cameras captured audio of Door being slammed - June 26, 2022*

*Keeps threatening to call 911 repeatedly every time she attempts to confront me. Came to our front door after midnight on the first day of the tenancy (falsely) claiming she knows there is domestic abuse occurring.*

In the Tenant's application, the Tenant acknowledged she received the One Month Notice on July 6, 2022, posted to her door.

The Landlord testified that she and her family were initially on good terms with the Tenant. The Landlord testified that the Tenant had invited her into the rental unit on several occasions. The Landlord explained that their relationship deteriorated after the Landlord expressed some concerns to the Tenant regarding her use of the rental unit, including the Tenant hammering screws into the walls and leaving an unsupervised plugged-in iron. The Landlord testified the Tenant became angry at her.

The Landlord gave verbal testimony and provided written submissions regarding various incidents involving the Tenant, which include the following:

- On June 26, 2022, the Tenant repeatedly slammed her door hard and late into the night, disturbing the Landlord's family and their neighbours.
- The Tenant repeatedly rang the Landlord's doorbell and knocked on the Landlord's door while heavily intoxicated on June 26, 2022, June 27, 2022, June 29, 2022, and July 1, 2022. The Landlord submitted photographs of the Tenant at the Landlord's front door, which were captured by the Landlord's security camera, together with the date and time.
- The Tenant would yell at the Landlord and her family in the backyard.
- On July 2, 2022, the Tenant called the police on the Landlord's family and made false allegations of domestic violence. The Landlord and her family were out on a walk at the time. Police attended at the property in response to the Tenant's call. The Landlord and her family returned to explain the situation. The police warned the Tenant for making a false report and warned that she could be charged for public mischief. The Landlord's evidence indicates that the reference to June 2, 2022 on the One Month Notice was a typo and should have been July 2, 2022.

The Landlord submitted that after the One Month Notice was issued, there were further police incidents with the Tenant on July 5, 2022 and July 16, 2022. The Landlord's evidence indicates that the Tenant made the same false allegations as before. The

Landlord submitted that they were advised to cease all contact with the Tenant and to continue with the process to evict the Tenant.

The Landlord submitted a copy of an email dated August 10, 2022 from the RCMP acknowledging receipt of the Landlord's request for records relating to the three police incidents.

The Landlord described other difficulties with the Tenant, including the Tenant purposely leaving the Landlord's dog gate open and improperly parking her car.

The Landlord also submitted records of her husband's work schedule to demonstrate that the Tenant's allegations of domestic violence and yelling are false.

In response, the Tenant testified that the Landlord and her family have been disturbing her due to their stomping, vacuuming, and their dogs barking. The Tenant testified she called the police on July 2, 2022 and on July 5, 2022 because the Landlord and her family were disturbing her. The Tenant testified that she made calls again on July 14 and 15, 2022 due to loud noises and disturbances from upstairs.

The Tenant submitted handwritten logs with dates and times for stomping, vacuuming, and dogs barking, with dates between July 14, 2022 and August 11, 2022.

The Tenant testified that she works full-time and is a busy person. The Tenant testified she has a medical condition. The Tenant testified she has been making recordings since July 2022. The Tenant testified she needed these recordings to talk to her counsellor and doctor for the medication that she needs.

The Tenant argued that the Landlord wants to end the tenancy because the Landlord does not like the Tenant hanging pictures, how the Tenant was hanging laundry, or the Tenant playing music outside.

The Tenant testified that the rental unit needs repairs. The Tenant testified that the Landlord entered the rental unit twice without her consent and that the Tenant's property has gone missing. The Tenant stated she does not accept the Landlord's video evidence. The Tenant testified that the Landlord's dogs have problematic behaviours.

The Tenant denied yelling at the Landlord or knocking on the Landlord's door.

## Analysis

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, I have reviewed the One Month Notice and note the typo regarding the date of the first police incident, which took place on July 2, 2022 rather than on June 2, 2022. I find that the Tenant knew or ought to have known that the correct date was July 2, 2022 and that it would be reasonable to amend the One Month Notice in the circumstances under section 68 of the Act. I find the One Month Notice to otherwise comply with the requirements set out in section 52 of the Act.

However, I find the effective date of the One Month Notice, August 6, 2022, does not comply with section 47(2) of the Act as it is not the day before the day in the month that rent is payable under the tenancy agreement. Pursuant to section 53 of the Act, I find

the effective date of the One Month Notice is automatically corrected to August 31, 2022.

Based on the Tenant's evidence, I find the Tenant was served with the One Month Notice in accordance with section 88(g) of the Act on July 6, 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 July 16, 2022 to dispute the One Month Notice. Records indicate that the Tenant submitted this application on July 12, 2022. I find the Tenant made this application within the 10-day dispute period required by section 47(4) of the Act.

Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, Rule 6.6 of the Rules of Procedure places the onus 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 issued the One Month Notice to end the tenancy on the grounds that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord.

Sections 47(1)(d)(i) of the Act states 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, [...]

Regarding the details of cause alleged in the One Month Notice, I find the Landlord's testimony do be more credible for the following reasons:

- The Tenant denied knocking on the Landlord's front door. However, I find the Landlord has provided clear photographic evidence of the Tenant at the Landlord's door, along with the specific dates and times of the incidents. I find the Landlord has included images showing the Tenant with her arm up as if to knock



or strike the door and the Tenant having her phone out as if to record the security camera. Therefore, I do not find the Tenant's testimony to be credible.

- The Tenant alleges that the calls she made to the police were about the Landlord and her family causing disturbances. However, I find the Tenant has not provided any description of what the alleged disturbances were on July 2, 2022, when the Tenant made her first call to the police. I find the Tenant has not provided any details to explain what she had observed and what she told the police on this occasion. I note that the entries in the handwritten noise log submitted by the Tenant begin on July 14, 2022, which was after the Tenant received the One Month Notice. As such, I am not able to conclude from the evidence that the Tenant had a reasonable basis for calling the police on July 2, 2022. In contrast, I find the Landlord provided a reasonably clear account of her version of the events that took place on July 2, 2022.

Therefore, having carefully considered the evidence before me, I accept the Landlord's evidence and find on a balance of probabilities that:

- the Tenant repeatedly slammed her door on June 26, 2022 into the night, disturbing the Landlord and her family members;
- the Tenant repeatedly rang the doorbell and knocked on the Landlord's front door and attempted to confront the Landlord on June 26, 2022, June 27, 2022, June 29, 2022, and July 1, 2022;
- the Tenant called the police on the Landlord and her family on July 2, 2022 without reasonable basis

I find that as a result of the above-described conduct and incidents, the Tenant has significantly interfered with and unreasonably disturbed the Landlord and the Landlord's family members, who are also occupants of the residential property. As such, I conclude that the Landlord has established, on a balance of probabilities, cause for ending the tenancy under section 47(1)(i).

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

## *2. Is the Tenant entitled to recover the filing fee?*

The Tenant has not been successful in cancelling the One Month Notice. I decline to award the Tenant reimbursement of her filing fee under section 72 of the Act.

*3. 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 claim to cancel the One Month Notice, I find the Landlord is entitled to an Order of Possession pursuant to section 55(1) of the Act.

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

Conclusion

The Tenant's claims to cancel the One Month Notice and to recover the filing fee are dismissed without leave to re-apply.

The Tenant's remaining claims on this application are severed and dismissed with leave to re-apply. Leave to re-apply does not extend any applicable limitation periods.

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: September 28, 2022

---

Residential Tenancy Branch