



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **CNC, PSF**

### Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act ("the Act") for orders as follows:

- Cancellation of a One Month Notice to End Tenancy for Cause ("One Month Notice") pursuant to section 47 of the Act
- For an order to provide services or facilities required by the tenancy agreement or law pursuant to section 62 of the Act

Both parties attended the hearing with the landlord represented by an agent TB. The tenant PL appeared along with agent YB and assistant AS. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

Both parties confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The tenant confirmed receipt of the One Month Notice dated May 30, 2022. Pursuant to section 88 of the Act the tenant is found to have been served with this notice in accordance with the Act. The landlord acknowledged receipt of the dispute notice and evidentiary package dated June 6, 2022 and sent by registered mail June 17, 2022. Service is in accordance with sections 88 and 89 of the Act.

The landlord also served their evidentiary package on the tenant and the tenant acknowledged receipt of the materials. However, the RTB did not receive the landlord's evidence.

### Preliminary Issues

The tenant applied for an order requiring the landlord to provide services or facilities required by the tenancy agreement or law. As this issue is separate from the dispute of the One Month Notice, pursuant to Rule 2.3 of the RTB Rules of Procedure, I have severed that issue with leave to reapply to the RTB.

Rule 3.18 of the RTB Rules of Procedure state:

**3.18 Evidence not received by the arbitrator**

The arbitrator may adjourn a dispute resolution hearing to receive evidence if a party can show that the evidence was submitted to the Residential Tenancy Branch directly or through a Service BC Office for the proceeding within the required time limits, but was not received by the arbitrator before the dispute resolution hearing.

The landlord stated that they had provided an evidence package to the RTB, however the landlord did not provide proof that the evidence was uploaded into the RTB system. Therefore I did not adjourn the hearing, and I decline to consider the landlord's documentary evidence as there is no proof that the evidence was provided to the RTB.

Issue(s) to be Decided

1. Is the One Month Notice to End Tenancy for Cause valid and enforceable against the tenant? If so, is the Landlord entitled to an Order of Possession?

Background and Evidence

The tenancy commenced in the building in unit #108 on April 1, 2013. A new tenancy agreement was signed on August 1, 2014 for that same unit. Rent is \$320.00 per month. The landlord currently holds a security deposit of \$250.00 in trust.

The parties agree that the tenant occupied a non-wheelchair accessible unit ("unit #108) in a building operated by the landlord for several years. The tenant requires the use of a scooter for her mobility. Another unit ("unit #311") that was wheelchair accessible became available and the tenant moved into that unit over the course of several days in April 2022. A new tenancy agreement was not signed for unit #311. The exact date that the tenant occupied unit #311 is unclear but the parties agree that as of May 1, 2022 the tenant occupied unit #311.

In April 2022 during the course of the tenant's move, the landlord discovered that damage had been done to unit #108. The tenant disputes this as the date it was discovered and stated that the landlord was aware of much of the damage prior to that time but did not raise a concern. On May 30, 2022 the landlord issued the tenant the One Month Notice to vacate unit #311 as a result of the damage done to unit #108.

### Analysis

Section 47 of the Act states:

**47 (1)**A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(f)the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;

Section 44 of the Act states that:

**44 (1)**A tenancy ends only if one or more of the following applies:

(d)the tenant vacates or abandons the rental unit;

Section 1 of the Act defines "rental unit":

**"rental unit"** means living accommodation rented or intended to be rented to a tenant;

The tenant vacated the rental unit in April, 2022, and although the specific date that the tenant vacated was not clear, by May 1, 2022 the tenancy ended for unit #108. A new tenancy was commenced for unit #311, which is the unit that the landlord wishes to end the tenancy with the tenant.

As the damage was done to unit #108, and that tenancy ended by May 1, 2022 when the tenant vacated that unit, the landlord cannot issue a One Month Notice to the tenant for a new and different tenancy in unit #311. The damage is to a rental unit that is no longer the subject of a tenancy agreement. The tenancy has ended for that unit and the

landlord cannot end the new tenancy in unit #311 for reasons related to the previous tenancy in unit #108.

I find the One Month Notice is not valid and is cancelled.

### Conclusion

The tenant's application to cancel the One Month Notice is granted. The tenancy shall continue until it is ended in accordance with the Act.

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: October 24, 2022

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Residential Tenancy Branch