



# 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 the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the One Month Notice to End Tenancy for Cause (the "**Notice**") pursuant to section 47;

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:50 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m.

The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-numbers and participant codes had been provided in the Notice of Hearing.

I confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord confirmed receipt of the notice of dispute resolution package. He advised that the tenant had delivered the Notice of Dispute Resolution package, but he could not remember on what date. I find that the landlord was served with this package in accordance with sections 88, 89, and 90 of the Act.

The landlord did not submit any evidence to the Residential Tenancy Branch (the "**RTB**") and therefore had no evidence to provide to the tenant.

I note s. 55 of the Act requires that when a tenant applies for dispute resolution seeking to cancel a notice to end tenancy issued by the landlord, I must consider if the landlord is entitled to an order of possession, and/or a monetary order if the application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the Act.

At the outset, I advised the landlord of rule 6.11 of the RTB Rules of Procedure (the "**Rules**"), which prohibits participants from recording the hearing. The landlord confirmed that he was

not recording the hearing. I also advised the landlord that pursuant to Rule 7.4, I would only consider written or documentary evidence that was directed to me in the hearing.

### **Preliminary Issue- Tenant Application Dismissed**

Rule 7.1 and 7.3 of the Rules read as follows:

#### **Rule 7- During the Hearing**

##### **7.1 Commencement of the dispute resolution hearing**

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

##### **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 re-apply

Further, Rule 7.4 states:

##### **7.4 Evidence must be presented**

Evidence must be presented by the party who submitted it, on or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submission supplied may or may not be considered.

##### **2.5 Documents that must be submitted with an Application for Dispute Resolution**

To the extent possible, the applicant should submit the following documents at the same time as the application is submitted:

- a detailed calculation of any monetary claim being made;
- a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and
- copies of all other documentary and digital evidence to be relied on in the proceeding, subject to Rule 3.17 [Consideration of new and relevant evidence]

Other than the initial application and the One Month Notice, the tenant failed to submit any documentary and/or digital evidence to be relied on in the proceeding and he did not attend the hearing to present oral testimony.

Accordingly, in the absence of any attendance at this attending the hearing by the applicant (tenant), I order the tenant's application dismissed, without leave to reapply.

I note s. 55 of the Act requires that when a tenant applies 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 or a monetary order if the application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the Act.

Relying on *M.B.B. v. Affordable Housing Charitable Association, 2018 BSCS 2418*, the landlord must still prove the grounds to end tenancy when a tenant does not appear to present their application to cancel the notice.

[27] I accept it was open to the arbitrator to proceed with the hearing or dispense with the hearing altogether and decide the matter in the absence of M.B.B., but in doing so, the arbitrator still had to resolve the issue raised by the application on the merits in some way. It was insufficient to dismiss the application solely on the grounds that M.B.B. had not dialed in to the hearing within the first ten minutes as she was supposed to have done.

I decided the hearing would proceed in the absence of the tenant.

### **Issues to be Decided**

Is the tenant entitled to:

- 1) an order cancelling the Notice?

If the tenant fails in his application, is the landlord entitled to:

- 1) an order of possession?

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of the Landlord not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The parties entered into a written month to month tenancy agreement starting November 11, 2020. Monthly rent is \$520.00 and is payable on the first of each month. The tenant paid the landlords a security deposit of \$256.50. The Landlord still retain this deposit. The tenancy agreement was not uploaded to the RTB file.

On his application, the Tenant wrote, "This should be believed and known as extreme and harsh pointed (?) penalty (if at all) for an accident w/out even a warning eviction. I don't think eviction has [?] for this."

The Landlord testified that the tenancy continues, and he has not filed an application for dispute resolution because he thought he had to await the outcome of this hearing before filing for dispute resolution and an order of possession. The Landlord provided no documentary evidence.

It is the affirmed undisputed testimony of the Landlord the reason the One Month Notice was issued was because this is the second time the tenant caused significant water damage to his rental unit as well as the two rental units below him. On July 1, 2022, the tenant place a stopper in the sink, turned the water on, and left the rental unit. The sink overflowed causing water damage to the ceiling tiles and drywall in the units below.

The Landlord estimates the damage to the ceiling tiles and replacement of the drywall came to about \$300.00 for materials. All work is done in house, so there is no associated labor costs. The Landlord provided no receipts for the materials.

Soon after moving in, the Landlord testified that the Tenant 'messed around with the plumbing' in the rental unit. The tenant disconnected the existing sink and replaced the sink with his own sink but did not plumb the sink pipes correctly and caused water damage to the rental units below resulting in about \$500.00 in damaged property. The ongoing

The landlord said that the tenant is a decent guy, for the most part, but is sometimes a problem such as when he floods his rental unit and the rental units below him. This creates problems and disruption for the other occupants in the residential property. The landlord stated the tenant had been warned about leaving water running in the rental unit and leaving the rental unit.

The landlord testified on July 7, 2022; he posted the Notice on the tenant's door. The One Month Notice for Cause was issued for the following reason:

Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.

### **Analysis**

I reviewed the One Month Notice and confirm the Notice complies with the form and content requirements pursuant to s. 52 of the Act. Pursuant to Rule 6.6 of the Rules, it is the Landlords who have the onus to prove the Notice. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

The Notice was issued pursuant to sections 47(1)(f) of the Act which reads:

**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;

The Tenant had 10 days to dispute the Notice pursuant to s. 47(4) of the Act. There is no issue that the Tenant received the Notice on July 7, 2022, as confirmed in the Tenant's application. The Tenant's Application was filed on July 15, 2022, within time.

The Landlord submitted no documentary evidence for the hearing. He provided no receipts for the materials, impact statements from affected occupants or called affected occupants as witnesses. The Landlord provided no photos of the damage.

In relation to section 47(1)(f) of the Act, the Landlord must prove extraordinary damage. This is a high threshold.

I am not satisfied, based solely on the oral testimony of the Landlord, that the Tenant or occupants caused extraordinary damage to the rental unit. The Landlord stated that the damage was limited to 'some' ceiling tiles in two (2) rental units and replacement of drywall that 'approximately' cost \$300.00 in materials.

In the circumstances, I am not satisfied based on the evidence provided by the Landlord that he had grounds to issue the Notice. I, therefore, cancel the Notice. The Notice is of no force or effect. The tenancy will continue until ended in accordance with the Act.

I do note the following. I found this to be a close case. Had the landlord provided sufficient supporting evidence from witnesses, invoices, and documented number of working hours required to complete the repairs along with photos of the damage, it may be that the Landlord can end the tenancy under a different section of section 47 of the Act.

### **Conclusion**

I dismiss the tenant's application to cancel the One Month Notice for Cause, without leave to reapply.

The Notice is cancelled. The tenancy will continue until ended in accordance with the Act.

Dated: October 13, 2022