



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing originally convened on June 24, 2022 and was adjourned to October 31, 2022. This decision should be read in conjunction with the June 24, 2022 Interim Decision. 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, the tenant's agent/partner, landlord J.M. and agents S.A. and C.C. (the "agents") for the other landlord attended the hearings and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Per section 95(3) of the *Act*, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

Section 55(1) of the *Act* states that if the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice, the director must grant the landlord an order of possession.

### Preliminary Issue- Presentation of Evidence

Rule 7.4 of the Residential Tenancy Branch Rules of Procedure (the “*Rules*”) states:

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

Both parties were advised that it was their responsibility to present their evidence, and that evidence not presented may not be considered. I note that the majority of the tenant’s evidence was not presented and was therefore not considered.

### Issue

1. Is the tenant entitled to the cancellation of the Notice, pursuant to section 47 of the *Act*?
2. If the tenant’s application is dismissed or the landlord’s Notice to End Tenancy is upheld, and the Notice to End Tenancy complies with the *Act*, is the landlord entitled to an Order of Possession, pursuant to section 55 of the *Act*?

### Background/Evidence

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

Both parties agreed to the following facts. This tenancy began on April 1, 2015. Monthly rent in the amount of \$718.00 is payable on the first day of each month. A security deposit of \$325.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Pursuant to the Interim Decision dated June 24, 2022, the landlord entered into evidence a copy of the Notice. The Notice is signed by landlord J.M., is dated March 2 2022, gives the address of the rental unit, states that the effect date of the notice is April 30, 2022, is in the approved form, #RTB-33, and states the following grounds for ending the tenancy:

- The tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord, and
- The tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.

Landlord J.M. testified the Notice was served on the tenant because the tenant's partner, who lives with the tenant, set up a marijuana grow tent in the basement and diverted heat from the furnace system to the grow tent. Both parties entered into evidence photographs of additional ducting attached to the furnace ducting by the tenant's partner.

Both parties agree that the tenant's partner removed the ductwork from the furnace ducting at the direction of landlord J.M. but later reinstalled it and that it remains installed to this day. The tenant testified that he spoke to an advocate who told him he was allowed to grow marijuana plants in the basement and so he decided to reinstall the ducting. The tenant's partner testified that he did not alter the furnace itself, just the ducting.

Agent C.C. testified that the subject rental property and the unit above the subject rental property are all heated by a single furnace. Agent C.C. testified that after the tenant altered the ducting, the tenant residing in the suite above the subject rental property complained of a lack of heat and that when the ducting was briefly removed, the heating in the upper unit improved.

The tenant's partner testified that the tenant living in the unit above is the father of the tenant's son.

The tenant's partner testified that the alterations he made to the heating system improved the upper tenant's heating and did not make it worse. The tenant's partner referenced a signed letter written by the upper unit tenant which states:

The landlord misunderstood me when I told him about the heat. Around 6 months ago [the tenant and the tenant's partner] asked me if I noticed a difference with the amount of heat that was coming from the vents. I told them that I did notice a difference. I was getting more heat, not less. I told them that whatever you did downstairs helped massively. I was getting a lot more heat....

It was undisputed that heat is included in the rent. Landlord J.M. testified that the heat included in the rent is for residential heating, it is not for heating a grow op in the basement of the subject rental property.

Agent C.C. testified that the landlords have a duty to maintain the furnace, but the furnace technicians will not service the furnace with the unauthorized modifications made by the tenant's partner. The tenant's partner testified that he did not know about this.

Landlord J.M. testified that the unauthorized alterations, which were not made by a professional have created hazards at the subject rental property including fire hazards, air quality concerns and mold concerns.

The tenant's partner testified that the marijuana tent is only housing three marijuana plants and some tomato plants, and that the marijuana is only for personal use. The tenant's partner testified that he has chronic pain and is waiting on a license to grow from Health Canada.

The tenant's partner testified that the landlords are brushing up against human rights issues and that he is permitted to grow marijuana for his chronic pain. The tenant uploaded a significant number of documents pertaining to the BC Human Rights Code; however, none of these were presented and no further arguments pertaining to the BC Human Rights code were made. As these documents were not presented, they have not been considered.

The tenant's partner testified that the modifications he has made have not damaged the furnace. The tenant's partner referenced a signed letter from a handyman which states:

[Landlord J.M.] hired me to do some renovations at [the subject rental property].  
I started work on the rental unit around November of last year  
[Landlord J.M.] was around quite often.  
[Landlord J.M.] was all around the house, upstairs, downstairs and basement.  
The tenant's partner showed me the pot plants.  
[The tenant and the tenant's partner] have been quite patient.  
The work is still ongoing.  
As far as I can tell [the tenant's partner] hasn't done any damage to the rental.

### Analysis

Upon review of the Notice I find that it meets the form and content requirements of section 52 of the *Act* because it:

- is signed and dated by the landlord,
- gives the address of the subject rental property,
- state the effective date of the notice,
- states the ground for ending the tenancy, and
- is in the approved form, RTB Form #33.

Section 47(1)(d)(ii) of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

Based on the testimony of both parties, I find that the tenant's partner, who is a person permitted on the property by the tenant, has altered the heating ducting at the subject rental property, without the consent of the landlords.

I accept agent C.C.'s testimony that furnace technicians will not service the furnace while the ducting modifications installed by the tenant's partner are in place. I find that the above testimony accords with common sense, I find it unlikely that a licensed professional would sign off on a furnace and ducting system with do-it-yourself modifications that were not completed by professionals.

I find that the tenants had no authority to alter the ducting system in the subject rental property and that in making said alterations and in refusing to remove them, the tenant and the tenant's partner jeopardized the landlord's lawful right to maintain his property, contrary to sections 32 and 47(1)(d)(ii) of the *Act*. I therefore uphold the Notice and dismiss the tenant's application for dispute resolution without leave to reapply.

I note that even if the tenant and the tenant's partner were permitted to grow marijuana in the subject rental property, that does not permit the tenant to make alterations to the ducting. To be clear, this tenancy is not ending because the tenant and the tenant's partner grew marijuana, but because the tenant's partner modified the landlord's ducting without permission which impacted the landlord's lawful right to maintain the property.

Section 55 of the *Act* states that 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.

I find that since the Notice complies with section 52 of the *Act* and the tenant's application to cancel the Notice was dismissed, the landlord is entitled to a two-day Order of Possession.

### Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenant**. Should the tenant and all other occupants 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: October 31, 2022

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Residential Tenancy Branch