



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, FFT

### Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) filed by the Tenant under the *Residential Tenancy Act* (the Act) on May 26, 2022, seeking:

- Cancellation of the One Month Notice to End Tenancy for Cause (One Month Notice), and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 11:00 AM on October 4, 2022, and was attended by the Tenant, an agent for the Tenant A.K. (the Agent), another occupant of the rental unit K.R. (the Occupant), the Landlord and the Landlord's spouse D.M., who is also named as a landlord in the tenancy agreement. Part-way through the hearing another agent for the Tenant, A.K. attended, but only stayed briefly as A.K. was already representing the Tenant. All testimony provided was affirmed. As the Landlord acknowledged receipt of the Notice of Dispute Resolution Proceeding and stated that they had no concerns with regards to the date or method of service, I found that they were sufficiently served with the NODRP for the purposes of the Act and the Residential Tenancy Branch Rules or Procedure (Rules of Procedure) and hearing proceeded as scheduled. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The participants were advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The participants were asked to refrain from speaking over myself and to hold their questions and responses until it was their opportunity to speak. The participants were

also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the parties, a copy of the decision and any orders issued in favor of the parties will be e-mailed to them at the e-mail addresses confirmed at the hearing.

### Preliminary Matters

#### Preliminary Matter #1

Although the parties engaged in lengthy settlement discussions pursuant to section 63 of the Act, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision under the authority granted to me by the Director of the Residential Tenancy Branch (the Branch) under section 9.1(1) of the Act.

#### Preliminary Matter #2

The Landlord stated that the documentary evidence before me from them was served on the Tenant on September 21, 2022, and the Tenant acknowledged receipt on that date. As a result, I accepted the documentary evidence before me from the Landlord for consideration. At the hearing the Tenant stated that they had not served any documentary evidence on the Landlord or submitted any documentary evidence to the Branch, for consideration.

### Issue(s) to be Decided

Is the Tenant entitled to cancellation of the One Month Notice?

If not, is the Landlord entitled to an Order of Possession pursuant to section 55(1)?

Is the Tenant entitled to recovery of the filing fee?

### Background and Evidence

The tenancy agreement in the documentary evidence before me states that the one-year fixed term tenancy commenced on March 1, 2022, that rent in the amount of \$2,600.00 is due on the first day of each month and that a security and pet damage deposit were both required in the amount of \$1,300.00 each. The parties agreed that the rental unit is located in a single-family home with two separate suites.

The Landlord stated that the Tenant and or persons permitted on the residential property by the Tenant had significantly interfered with and unreasonably disturbed another occupant at the property, and seriously jeopardized the health or safety or a lawful right or interest of the Landlord or another occupant. The Landlord stated that the other occupant of the property repeatedly made complaints to them regarding excessive and unreasonable amounts of noise occurring in the rental unit and issues with the Tenant's dog, who they deemed to be aggressive. The Landlord stated that the RCMP were called numerous times and had to attend the property as a result. The Landlord also stated that city bylaw was involved with regards to the Tenant's pets and that the other occupant of the property, who resided in the basement suite, provided notice to end their tenancy as a result of the behavior of the Tenant, the Tenant's previous spouse, who has since passed away, and the Tenant's guests.

In support of these allegations, the Landlord submitted copies of numerous complaints from the former occupant of the basement suite as well as occupants of the neighboring properties, regarding the disturbances caused by the Tenant, the Tenant's former spouse, the Tenant's guests, and the Tenant's pets.

The Landlord also stated that the Tenant had breached material terms of the tenancy agreement and addendum, specifically terms 8,14, and 23. The Landlord stated that breach letters were served on May 9, 2022, and June 1, 2022. Finally, the Landlord stated that the Tenant had permitted an unreasonable number of occupants. As a result, the Landlord stated that the One Month Notice was served.

The One Month Notice in the documentary evidence before me is signed and dated May 21, 2022, has an effective date of June 30, 2022, and list of following reasons for ending the tenancy:

- there are an unreasonable number of occupants in a rental unit;

- the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- 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; and
- the tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

In the Application the Tenant acknowledged receipt in person on May 21, 2022. At the hearing the Tenant and their Agent stated that the downstairs occupant was in fact harassing the Tenant and not the other way around, as alleged by the Landlord. They stated and that there is no evidence that bylaw enforcement was ever involved with the Tenant or the Tenant's pets and that in fact, bylaw enforcement has never been contacted or involved. The Tenant also denied receipt of any breach letters.

### Analysis

Based on the documentary evidence and testimony before me for consideration, I am satisfied that a tenancy to which the Act applies exists between the parties. I am also satisfied that the One Month Notice was personally served on the Tenant on May 21, 2022. As the Tenant filed their Application seeking to dispute the One Month Notice on May 26, 2022, I find that the Application was therefore filed within the timeline set out under section 47(4) of the Act.

Rule 6.6 of the Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, and that where a tenant applies to cancel a notice to end tenancy, the landlord must prove the reason they wish to end the tenancy.

Although the Tenant denied the allegations against them, no documentary or other corroboratory evidence was submitted by the Tenant or their Agent. In contrast, a significant number of written complaints were before me from both the former occupant of the basement suite and occupants of neighboring homes, regarding repeated, significant, and unreasonable disturbances caused by the Tenant, the Tenant's former spouse, the Tenant's guests, and the Tenant's pets. As a result, I find that the Landlord has satisfied me on a balance of probabilities that they have grounds to end the tenancy pursuant to section 47(1)(i) of the Act for significantly interfering with and/or

unreasonably disturbing another occupant of the property, the former occupant of the basement suite. As a result, I dismiss the Tenant's Applications seeking cancellation of the One Month Notice, without leave to reapply.

As I am satisfied that the One Month Notice complies with section 52 of the Act, I therefore grant the Landlord an Order of Possession for the rental unit pursuant to section 55(1) of the Act. As the effective date of the One Month Notice, June 30, 2022, has passed, and at the hearing the parties were agreed that full rent for the month of October 2022 had not been paid, I grant the Landlord an Order of Possession effective two days after service on the Tenant, pursuant to section 68(2)(a) of the Act and Residential Tenancy Policy Guideline #54.

As the Tenant was unsuccessful in their Application, I declined to grant them recovery of the \$100.00 filing fee.

### Conclusion

The Tenant's Application is dismissed in its entirety, without leave to reapply.

Pursuant to section 55(1) and 68(2)(a) of the Act, I grant the Landlord an Order of Possession for the rental unit effective **two (2) days after service on the Tenant**. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant or any occupants 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 Branch under Section 9.1(1) of the Act.

Dated: October 12, 2022

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Residential Tenancy Branch