



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Kekinow Native Housing Society  
and [tenant name suppressed to protect privacy]

## **DECISION**

<u>Dispute Codes</u>	Tenant's application:	CNC
	Landlord's application:	OPC, FF

### Introduction

This hearing dealt with the cross applications of the parties for dispute resolution (applications) seeking remedy under the Residential Tenancy Act (Act).

The tenant applied for an order cancelling the One Month Notice to End Tenancy for Cause (Notice/1 Month Notice) issued by the landlord.

The landlord applied for an order of possession of the rental unit pursuant the Notice and recovery of the cost of the filing fee.

The tenant and the landlord's agent/property manager (landlord) attended the hearing. The hearing process was explained to the parties, and they were given an opportunity to ask questions. All parties were affirmed.

The parties did not raise any issue about the service of the other's evidence. The landlord said that she did not receive the tenant's application and the tenant was not able to provide information about when and how her application may have been served to the landlord. I therefore find insufficient evidence that the landlord was served with the tenant's application. Despite this, I proceeded to consider the merits of the landlord's Notice rather than grant the landlord the relief they sought based on the conclusive presumption under section 47(5) of the Act.

Thereafter parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

#### Issue(s) to be Decided

Has the landlord submitted sufficient evidence to support their Notice?

Is the tenant entitled to an order cancelling the Notice?

#### Background and Evidence

The landlord submitted a written tenancy agreement showing a tenancy start date of December 1, 2014. The rental unit is located in a 36-unit apartment building.

Pursuant to the Rules, the landlord proceeded first in the hearing and testified in support of the Notice. The Notice was dated June 14, 2022, was served to the tenant by personal service that day, and listed an effective end of tenancy of June 14, 2022. Filed in evidence was a copy of the Notice.

The reasons listed on the Notice to end tenancy were that 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.
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
- breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

In the details of the causes listed on the Notice, the landlord stated that on June 9, 2022, a tenant in the building emailed them and reported that her son had been

attacked by a dog belonging to the tenant, with a picture of her son's leg, showing teeth marks and bruises on his skin.

Additionally, on June 11, 2022, another tenant emailed the landlord about an incident of his boy being attacked by the dog belonging to the tenant. That tenant said the dog jumped on the child's leg and left teeth marks on his skin.

The landlord also wrote, "There is a NO PET policy in the complex."

The landlord said that the tenant has a pit bull dog living in her rental unit, although there is a no pet policy in the tenancy agreement. The landlord submitted that the dog is allowed to wander on the property and that the dog has attacked two children.

Filed in evidence was a photograph of a leg showing some scratches, with one scratch mark having bled, and some bruises.

The landlord filed a video of a dog knocking down a young child and being chased off by two adults.

In response, the tenant testified that she first obtained the dog, as a puppy, in October 2021 for emotional support for herself and her children, as her son died in August 2021.

The tenant said that every person in the complex has a dog and the landlord never enforces the no pet clause with any other tenant. One dog in particular is a large, white dog. Other dogs are chihuahuas and shih tzu's. The tenant said that she told the boy not to poke her dog with his stick.

The tenant said that she walks her dog while on leash and that the dog did get out once when her children opened the gate.

The tenant submitted that the marks on the child's leg in the photograph does not look like the bite of a pit bull, as this bite shows about 2 fingers wide and a pit bull bite is much larger. The tenant said that the bite looked like it was an old mark.

The landlord responded and agreed that there were other dogs living in the complex, but that the landlord is trying to get a handle on the situation.

The landlord agreed that they would allow a registered emotional support dog live on the premises, but there is no proof that the tenant's dog was registered as an emotional support dog.

The tenant agreed that her dog was not registered as an emotional support dog, but is licensed with the city. The tenant said that every tenant on her side of the building has a dog and that she did not get a warning letter from the landlord.

Filed in evidence by the tenant was a copy of the Notice, with an attached letter from the landlord, dated June 9, 2022. The letter informed the tenant that they had received a "serious complaint" of her dog attacking a child in the complex, and that the parent sent a photograph.

The landlord instructed the tenant to remove the dog immediately to keep her tenancy in good standing.

### Analysis

I have carefully reviewed and considered the relevant oral and written evidence submitted by the parties.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. Where a tenant applies to dispute a 1 Month Notice, the onus is on the landlord to prove the grounds on which the Notice is based, on a balance of probabilities, meaning the events as described by one party are more likely than not. Where more than one reason is indicated on the Notice the landlord need only prove one of the reasons.

Upon review of the 1 Month Notice, I find the Notice to be completed in accordance with the requirements of section 52 of the Act and I find that it was served upon the tenant in a manner that complies with section 89(1) of the Act. Section 47(2) provides that a 1 Month Notice must end the tenancy effective on a date that is not earlier than one month after the date the Notice was received and the day before the day in the month that rent is payable. In other words, the landlord must give the tenant a clear calendar month's notice.

Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act. Therefore, I find that the Notice

effective date of July 14, 2022, listed on the Notice is automatically corrected to July 31, 2022.

Section 47(1)(d)(ii) of the Act authorizes a landlord to 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.

Section 28 of the Act states that all tenants are entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the Act; use of common areas for reasonable and lawful purposes, free from significant interference.

After careful consideration of the foregoing relevant written and oral evidence, and on a balance of probabilities, I find as follows:

I find that the landlord submitted sufficient evidence to support their Notice. In reaching this conclusion, I reviewed the video provided by the landlord. This video showed an unleashed dog running to a small child and knocking over that child. Two adults immediately chased the dog away. However, from viewing the video, I find it reasonable to conclude that the dog could have harmed the child much greater if not for the quick actions of the two adults.

I also find the landlord's photo compelling evidence that the dog also bit a child enough to leave scratches, one which bled, and bruises. The landlord's 1 Month Notice provided the names and unit numbers.

I find this evidence to be consistent, compelling, and convincing.

Additionally, the tenant never specifically denied the dog in the video knocking over the small child was her dog.

Based on the totality of the evidence before me, I find the landlord submitted sufficient evidence to show on a balance of probabilities that the tenant, by bringing a pit bull dog to live on the residential property and rental unit, has seriously jeopardized the safety of another occupant as the dog caused injury to one child and greater potential harm to a small child.

I find the landlord was left with no choice but to issue the tenant the Notice, to preserve their other tenants' safety and their right to quiet enjoyment.

As I have found the landlord has proven at least one of the causes they listed on the Notice, it was not necessary to consider the other listed causes.

For these reasons, I **dismiss** the tenant's application requesting cancellation of the Notice, without leave to reapply, as I find the 1 Month Notice dated June 14, 2022, valid, substantiated by the evidence, and consequently, enforceable. I therefore uphold the Notice and I **order** the tenancy ended on the corrected, effective date of that Notice, or July 31, 2022.

Pursuant to section 55(1)(b) of the Act, I grant the landlord an order of possession of the rental unit (Order), effective **two (2) days after service on the tenant**.

Should the tenant fail to vacate the rental unit pursuant to the terms of the Order after it has been served upon her, this Order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenant is cautioned that costs of such enforcement, **such as bailiff costs**, are recoverable from the tenant.

As I have dismissed the tenant's application, without leave to reapply, I find the landlord's application is successful and grant the landlord recovery of the filing fee of \$100.

I grant the landlord a monetary order in the amount of \$100.

### **Conclusion**

The tenant's application is **dismissed without leave to reapply**. The landlord has met the statutory requirements to end the tenancy and is granted an order of possession of the rental unit, effective **two (2) days** after service on the tenant.

The landlord's application is successful, and they have been granted a monetary order of \$100 for recovery of the filing fee.

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: November 11, 2022

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Residential Tenancy Branch