



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

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## **DECISION**

Dispute Codes      CNC PSF OLC LAT FFT

### Introduction

The tenants seek various relief under the *Residential Tenancy Act* (the “Act”).

A hearing was held on November 15, 2022. The tenants, one of the landlords, and the landlords’ agent attended. The parties who testified were affirmed and no service issues were raised.

### Preliminary Issue: Related Issues

Rule 2.3 of the *Rules of Procedure*, under the Act, states that claims made in an application “must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.”

It is my finding that the tenants’ claims for an order for compliance (section 62 of the Act), an order for services or facilities (section 62), and a request for authorization to change the locks (sections 31 and 70), are not sufficiently related to the primary claim for an order cancelling a *One Month Notice to End Tenancy for Cause* (the “Notice”). These unrelated claims are dismissed *with* leave to reapply. The tenants retain the right to file another application seeking relief under the Act for these issues.

### Issues

1. Are the tenants entitled to an order cancelling the Notice?
2. Are the tenants entitled to recovery of the application filing fee?

### Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began on June 1, 2021. Monthly rent was initially \$1,300.00, later decreased to \$1,250.00 by the landlords after the tenants' access and use of laundry facilities was severed. The tenants paid a \$650.00 security deposit, and there is a written tenancy agreement in evidence. The rental unit is the basement suite in a two-level home; the landlords reside in the upper part of the house.

On July 19, 2022, the landlords served the tenants with the Notice by posting it on the door of the rental unit. A copy of the Notice was submitted into evidence and the two reasons for it being issued are indicated on page two as the tenants having "significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property" and "seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant."

The "Details of the Event(s)" section of the Notice, on page two, includes the following information, written down by the landlords:

Details of the Event(s): Threatened my husband <sup>to be in</sup> him to jail few times on July 3, 2022 while serving them restricting a service notice, aggravating a mental health patient (my husband) creating problems between us. Yesterday (July 18, 2022) called the police for our dog barking and on my 13 years old son and my husband. They called animal control on my son's 3 years old well trained, friendly German Shepherd dog. Their behaviour is having a very negative effects on my husband's recovery and causing my son stress. Confirm with WCB for his mental health #28896632

The agent testified that the relationship between the parties has worsened, and that the tenants' behavior has negatively affected the lifestyle and living of the landlords. They further testified that the worsening situation came about after the landlords served a termination of facilities notice (regarding the laundry) on the tenants. The male landlord and the male tenant got "verbally aggressive to each other." In August the landlord was arrested and charged with assaulting the male tenant. The landlord is now living elsewhere and is prohibited by a peace bond from being near the property.

The agent testified that the male tenant threatened the male landlord and they got into an argument. There is a video in which the tenant purportedly told the landlord that he would send him to jail. A great deal of the testimony and submissions of the agent dealt with the male landlord's mental health issues and challenges, and how they were triggered by the male tenant's behavior.

The tenants testified that the chain of events began in early summer when the female landlord spoke to the tenants about raising the rent by \$200. The tenants countered that they would only be prepared to pay an extra \$50. (No written notice of a rent increase appeared to have been given by the landlords.) The landlords were unhappy with the counteroffer and purportedly decided to end the tenants' access to laundry and the common areas outside where the tenants' children would play. The landlords further erected a fence to bar access to the common area and for issues related to dogs.

Both tenants also gave additional testimony about further incidents which occurred after the Notice was issued. They denied the reasons as written in the Notice and argue that the Notice is being issued because the tenants refused to agree with a \$200.00 rent increase. Their refusal first led to a cessation of laundry access, followed by the erection of a fence, and ultimately to the issuing of the Notice.

### Analysis

The Notice was issued under subsections 47(1)(d)(i) and (ii), which state that

A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies: the tenant or a person permitted on the residential property by the tenant has

- (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant,

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. The onus to prove their case is on the person making the claim.

Based on the evidence before me, I am simply not persuaded that either tenant committed either of the conduct falling within subsections 47(1)(d)(i) and (ii). Certainly, while the male tenant and the male landlord engaged in verbal aggression with each other, it cannot be said that the male landlord is without fault for bringing about the situation. Indeed, it is the male landlord who was charged with assaulting the tenant.

It is also important to note that the male tenant testified under oath about his interactions with the male landlord, while no one on behalf of the landlords testified as to their having first-hand knowledge and actual witnessing of the incident. Testimony from the male landlord would, of course, have provided an alternative explanation. In summary, when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence *over and above* their testimony to establish their claim. In the case before me, I find the landlords have failed to establish that the tenants (the male tenant to be precise) did what they are alleged to have done as described in the Notice.

Thus, in taking into careful consideration all of the oral and documentary evidence before me, it is my finding that the landlords have not proven on a balance of probabilities the reasons or grounds on which the Notice was issued. Accordingly, I grant the tenants' application for an order cancelling the Notice. The Notice is cancelled effective immediately and the tenancy shall continue until it is ended in accordance with the Act and the regulations.

The tenants are entitled to recover the cost of the application filing fee under section 72 of the Act. Pursuant to section 72(2)(a) of the Act the tenants may make a one-time deduction of \$100.00 from a future rent payment in satisfaction of this award.

### Conclusion

**The application is granted, and the Notice is hereby cancelled.**

This decision is final and binding, and it is made on delegated authority under section 9.1(1) of the Act. A party's right to appeal this decision is limited to grounds provided under section 79 of the Act or by an application for judicial review under the *Judicial Review Procedure Act*, RSBC 1996, c. 241.

Dated: November 16, 2022

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Residential Tenancy Branch