



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding NANAIMO NON PROFIT HOUSING  
SOCIETY and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), to cancel a One Month Notice to End Tenancy for Cause dated August 28, 2022 ("One Month Notice").

Four agents for the Landlord, R.M., M.H., L.R., and W.R. ("Agents"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it.

The Tenant was provided with a copy of the Notice of a Dispute Resolution Hearing on September 21, 2022; however, the Tenant did not attend the teleconference hearing scheduled for December 1, 2022, at 11:00 a.m. (Pacific Time). The phone line remained open for over 15 minutes and was monitored throughout this time; however, the only persons to call into the hearing were the Respondent, Landlord's Agents, who indicated that they were ready to proceed.

Rule 7.1 of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules") states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. The Respondent Landlord's Agents and I attended the hearing on time and were ready to proceed, and there was no evidence before me that the Parties had agreed to reschedule or adjourn the matter; accordingly, I commenced the hearing at 11:00 a.m. on December 1, 2022, as scheduled.

Rule 7.3 states that 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 reapply. The teleconference line remained open for 17 minutes, however, neither the Applicant nor an agent acting on his behalf attended to

provide any evidence or testimony for my consideration. As a result, and pursuant to Rule 7.3, I **dismiss the Tenant's Application without leave to reapply**.

When a tenant applies to cancel an eviction notice, section 55 of the Act requires me to consider whether the landlord is entitled to an order of possession. I must grant the landlord an order of possession if, first, I dismiss the tenant's application, and second, if the eviction notice is compliant with the Act, as to form and content.

The onus to prove their case is usually on the person who applies for dispute resolution. However, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel an eviction notice. As such, the burden of proof is on the Landlord for this proceeding. Accordingly, we continued the hearing.

During the hearing, the Agents were given the opportunity to provide their evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Rules; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Agents said that the Landlord was not served with anything by the Tenant. The Agent said:

He said he had disputed [the One Month Notice], but he did not give us anything. I called the Residential Tenancy Branch and they emailed me a copy of all the documents filed by [the Tenant].

The Agent said that they later learned that the Tenant had mailed it to the wrong address – to that of another tenant. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Agent testified that the Tenant did not serve them with anything, which leaves me with another reason to dismiss the Tenant's Application pursuant to the Act and Rules.

#### Preliminary and Procedural Matters

The Tenant provided the Landlord's email address in the Application and the Agent confirmed this in the hearing. The Agents did not have an email address for the Tenant. They confirmed their understanding that the Decision would be emailed to the Landlord and mailed to the Tenant at the rental unit address. Any Orders would be sent to the appropriate Party in this manner.

At the outset of the hearing, I advised the Agents that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised them that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Should the One Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?

Background and Evidence

The Agents confirmed that the periodic tenancy began on June 4, 2016, with a monthly rent of \$482.00, due on the first day of each month. The Agents said the Tenant paid the Landlord a security deposit of \$225.00, and no pet damage deposit. They confirmed that the Landlord still holds the security deposit in full.

The Agents advised me of the contents of the One Month Notice. They said it was signed and dated August 28, 2022, it has the rental unit address, it was served in person on August 28, 2022, with an effective vacancy date of September 30, 2022, and that it was served on the grounds that the Tenant has seriously jeopardized the health or safety or lawful right of another occupant of the Landlord.

In the hearing, the Agents said:

The background story is I had a phone call from [M.H.] that afternoon, who's here with me now – he's a handyman. [M.] was very upset and concerned.

[The Tenant] had showed up at [M.'s] door very agitated and angry. [The Tenant] accused [M.] of entering his apartment without proper notice, and he had a butcher knife and he was being very aggressive, and [M.] felt threatened and was very afraid.

[M.] called me, saying he didn't know what to do. He called the RCMP, and I called [the Tenant] and asked him. At first, [the Tenant] said no, he didn't do it, and then he said no again, but then he said 'yes', he did do it. I asked him why, and he said that [M.] had entered his suite without notice, and he started rambling and then hung up on me.

There were more incidents. [The Tenant] – we issued a letter to him stating that the has been harassing [M.] since then, because we issued an eviction notice that same day.

We couldn't take this lightly, and he knew the reason why, and he started going to [M.'s] door. We sent a letter saying under no circumstances should you go to [M.'s] door. He has been relentless since then. Other things we couldn't prove . . ., but we couldn't prove it. We're walking on eggshells.

He'll yell from his balcony; other tenants are afraid of him.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 47 of the Act allows the landlord to end a tenancy for cause:

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

. . .

(d) 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, or
- (iii) put the landlord's property at significant risk;

In this case, the Landlord alleged that the Tenant had seriously jeopardized the health or safety or lawful right of another occupant or the landlord, when he attended [M.'s] apartment with a butcher knife and behaved aggressively.

When I consider all the evidence before me overall, I find that the Landlord has provided sufficient evidence to meet their burden of proof on a balance of probabilities, and to support the validity of the One Month Notice.

I also find that the One Month Notice issued by the Landlord complies with section 52 of the Act as to form and content. Given the above, and pursuant to section 55 of the Act, the Landlord is entitled to an Order of Possession.

Accordingly, and pursuant to section 55 of the Act, I grant the Landlord an Order of Possession for the rental unit. Given that the effective vacancy date has passed, the **Order of Possession will be effective two days** after the Tenant receives the Order.

### Conclusion

The Tenant is unsuccessful in his Application to cancel the One Month Notice, as the Landlord provided sufficient evidence to meet their burden of proof in this matter. I dismiss the Tenant's Application wholly, as I find that the One Month Notice is valid and effective as of September 30, 2022.

**Pursuant to section 55** of the Act, I grant an **Order of Possession** to the Landlord effective **two days after service of this Order** 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.

This Order must be served on the Tenant by the Landlord and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: December 02, 2022

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Residential Tenancy Branch