



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **CNC, PSF, OLC, FFT**

### **Introduction**

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (“Act”) for orders as follows:

- cancellation of the landlords’ One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to section 47
- for an order requiring the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62 of the Act
- for an order to provide services or facilities required by the tenancy agreement or law pursuant to section 62 of the Act
- reimbursement of the filing fee pursuant to section 72

Both parties attended the hearing with the landlord represented by an agents JM and RE, along with counsel RH, while the tenant TK appeared with advocates BJ and DA, and witnesses KB and JW. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

Both parties confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The tenant confirmed receipt of the One Month Notice dated November 1, 2022 with an effective date of December 31, 2022. Pursuant to section 89 of the Act the tenant is found to have been served with this notice in accordance with the Act.

The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the Act.

### Preliminary Issue

The tenant applied for several other orders in addition to cancellation of the One Month Notice. These issues are not related to the dispute of the One Month Notice and are therefore severed pursuant to Rule 2.3 of the RTB Rules of Procedure. The tenant has leave to reapply on these issues. This decision does not extend any time limits set out in the Act.

### Issue(s) to be Decided

1. Is the One Month Notice valid and enforceable against the tenant? If so, is the landlord entitled to an order of possession?
2. Is the tenant entitled to recover the filing fee for this application?

### Background and Evidence

The tenancy commenced March 5, 2018 on a month to month basis. Rent is \$375.00 per month plus \$10.00 per month storage. The landlord holds a security deposit of \$187.50 in trust for the tenant.

The One Month Notice was produced in evidence. The landlord alleges that the tenant significantly interfered with or unreasonably disturbed other occupants of the rental property, seriously jeopardized the health and safety of other occupants of the rental property and breached a material term of the tenancy agreement. The landlord pointed specifically to section 24 of the tenancy agreement and to the addendum to the tenancy agreement.

The landlord testified to a long unchanged pattern of the tenant's abusive behavior, aggression, stalking other tenants, and smoking on the balcony. The landlord stated that the rental property is not supportive housing, it's not-for-profit subsidized independent housing, and there is no health care or other supports on site. Residents are required to direct their own mental and physical health care and arrange their own supports.

The landlord produced four warning letters in evidence which the landlord stated were personally read to the tenant. The letters are dated February 24, 2020, July 12, 2022, October 7, 2022, and November 1, 2022. The landlord had in person meetings on July 12, 2022 and September 27, 2022 with the tenant which the landlord stated proved unhelpful.

The landlord stated that the tenant was smoking in his unit on July 12, 2022.

There are many reports from staff and other occupants of the tenant shouting and acting aggressively. The tenant's behaviour was making the other occupants scared.

The landlord produced an email from a staff member currently on stress leave because of the tenant's behaviour. That staff member is also resigning because of the tenant's behaviour. The landlord alleged that the tenant can be explosive and aggressive.

The landlord produced numerous complaints and impact statements from other occupants that were made throughout the month of October 2022 about the tenant's aggressive behaviour and actions. The landlord stated that they also received 16 emails from the tenant throughout September and October, which were not produced in evidence, as the recipient of the emails testified that she deleted them for her own mental health concerns. The emails were harassing the landlord, complaining about various things, telling the landlord how to do her job, complaining about other people, complaining about the state of the property, and complaining that other staff were incompetent. The landlord was unable to satisfy the tenant or deescalate the situation.

The landlord stated that there is a common thread of fear by the occupants about putting their concerns in writing as they were afraid the tenant would retaliate against them. The landlord produced an email dated July 12, 2022 from a staff member regarding a negative interaction with the tenant. The landlord produced a complaint letter from an occupant which is undated and describes an incident where she was physically assaulted by the tenant. The landlord produced an email dated August 22, 2022 from a staff member of the landlord which outlines a series of interactions with the tenant and the negative impact on the staff member's health.

The landlord testified that on October 20, 2022 the tenant destroyed a community garden belonging to the occupants of the rental property. The landlord produced complaints from the other occupants regarding this incident in evidence. The landlord produced a complaint letter from an occupant dated October 31, 2022 where the

occupant describes feeling like they were being held hostage by the tenant. In September 2022 the landlord attempted to set up mediation however the tenant refused to participate. The landlord produced a November 25, 2022 complaint from another occupant describing an incident where the tenant threatened aggression and to burn down building. That incident was reported to the police.

The landlord further testified that on January 9, 2023 the tenant admitted his behaviour and apologized. However the landlord is not prepared to work with the tenant any further. The landlord alleged that they are experiencing a staff retention issue because of the tenant's behaviour. The landlord's witnesses spoke of many attempts to work with tenant and that the tenant has refused to cooperate. They have tried to involve the tenant in restorative processes; however the tenant won't participate. The landlord stated that the tenant has shown no evidence of improvement. The landlord stated that the tenant does not deny his conduct. The witnesses testified to what they describe as a cycle of abuse with the tenant and staff and occupants. The tenant is abusive, which is then followed by apologies and then followed by a period of calm. Ultimately the cycle of the tenant's behaviour starts again. The landlord's witnesses stated that the tenant's behaviour is unpredictable.

The landlord also addressed in their evidence the statement provided by one of the occupants, JW in support of the tenant. The landlord pointed out that JW in his statement acknowledged the tenant's conduct and stated that he doesn't know everything the tenant is alleged to have done. The landlord further stated that the other witnesses that appeared at the hearing in support of the tenant do not live at the rental property. The landlord also noted that two incidents with the tenant occurred post notice, Nov 25, 2022 and Jan 11, 2023. The November 25, 2022 incident involved the police. The landlord testified that the tenant has refused mediation attempts and won't engage in conversations to resolve the issues. The landlord stated that they were required to take action to end the tenancy because the landlord has a legal duty to act to keep other occupants safe and the issues with the tenant have a lengthy history.

The tenant produced a document in evidence that outlines the tenant's position. The tenant stated that he had a restorative conversation in 2021 with staff and tenants. He pointed out that many of the other occupants have issues as well. For example, others have smoked on the balcony. The tenant stated that smoking policies were very loosely enforced, and he hasn't smoked on the balcony since receiving a warning letter in July, 2022.

The tenant testified that he is not a threat to other tenants. A family member of the tenant passed away January 2022, which was very stressful and caused him to act out. The tenant admitted that his behaviours have “stuck out” to other tenants. The tenant further admitted to complaining about the rental property and admitted poor conduct and being aggressive, but he stated he always apologized.

The tenant stated that he had no malicious intent to tear the garden apart and was just trying to be helpful in the garden and took out a bunch of plants by mistake. The tenant admitted to using drugs and making loud noises. The tenant stated that there are not adequate supports in the building for him.

The tenant produced numerous letters of support in evidence. Some of the support letters outline that the tenant is helpful to other occupants and some occupants have had no issues with the tenant.

The tenant’s counsellor testified that the tenant is making efforts to improve his behaviour and addiction issues. She stated that moving would be challenging in terms of the tenant’s addiction.

Another witness who was not an occupant stated that the tenant is hard working, and that she is aware of tenants “rants” but she does not believe he is violent. The tenant’s counsel stated that the tenant has contributed immensely to the rental property and has worked to make amends. Counsel further stated that it is appropriate to consider the tenant’s post notice conduct which has improved.

The tenancy agreement was produced in evidence along with an addendum to the tenancy agreement entitled Tenant Participation Agreement which was signed by the tenant.

The landlord stated that if an order of possession is granted, a possession date at the end of March 2023 is acceptable.

### Analysis

RTB Rules of Procedure 6.6 states, “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. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For

example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.” In this case, the landlord has the burden of proving the validity of the One Month Notice served on the tenant.

The Tenant Participation Agreement produced in evidence contains the following:

*Harassment of other tenants is not acceptable. Behaviour such as:*

- a) Violence, threats of violence, or intimidation towards any person in the building, either in person or on the internet;*
- b) Abusive or insulting words or behaviours*
- c) Damage or threats of damage to property belonging to another person, including damage to any part of their home, car, or personal belongings;*
- d) Writing threatening, abusive, or insulting graffiti;*

***VIOLATION OF THE ABOVE PROVISIONS IS A VIOLATION OF THE TENANCY***

***AGREEMENT AND GOOD CAUSE FOR A NOTICE TO END A TENANCY.***

***A single violation of any of the provisions of this added addendum shall be deemed a serious violation.***

The tenant does not deny the substance of most of the complaints. He and his witnesses stated that he is working hard to improve his behaviour, and that his intention was not to make the staff and occupants of the rental property fear for their safety.

I find that the tenant's behaviour unreasonably disturbed the other occupants and the landlord and caused them to fear for their safety. The tenant's behaviour is both a ground for cause to end the tenancy and a violation of a term of the tenancy agreement. Further I find that the term of the tenancy agreement the tenant violated is a material term, intentionally included to ensure that the living environment is safe for both the landlord's staff and the occupants of the rental property. The landlord produced numerous complaints from both occupants and staff of the landlord. The complaints consistently describe the tenant's unpredictable and violent behaviour. An occupant of the rental property was physically assaulted by the tenant.

The landlord has made numerous attempts to work with the tenant to improve his behaviour over several months. I find that the tenant was not cooperative with the landlord in working to resolve the issues. I also take into consideration the four written warnings given to the tenant and the fact that his behaviour did not improve as a result of the warnings. The tenant continued to unreasonably disturb the other occupants

even after receiving the One Month Notice as evidenced by two further incidents that occurred post notice, one involving the police.

I therefore find that the landlord has satisfied their onus to establish the reasons for issuing the One Month Notice. The tenant's dispute application is dismissed.

The One Month Notice meets the form and content requirements of section 52 of the Act. Section 55 of the Act requires me to issue an order of possession in favour of the landlord if the One Month Notice meets the form and content requirements of section 52 of the Act and if I dismiss the tenant's application. As section 55(1) of the Act is satisfied, the landlord is entitled to an order of possession. Based on the parties' submissions, I find it is appropriate to grant an order of possession effective March 31, 2023.

As the tenant was unsuccessful in his application, he is not entitled to recover the filing fee for the application.

### Conclusion

The landlord is granted an order of possession which will be effective March 31, 2023 at 1:00pm. The order of possession must be served on the tenant. The order of possession may be filed in 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: January 31, 2023

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Residential Tenancy Branch