



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPC, FFL; CNC, FFT

### Introduction

This hearing dealt with the landlords' application, filed on September 17, 2022, pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession for cause, pursuant to section 55; and
- authorization to recover the \$100.00 filing fee paid for their application, pursuant to section 72.

This hearing also dealt with the tenant's application, filed on August 30, 2022, pursuant to the *Act* for:

- cancellation of the landlords' One Month Notice to End Tenancy for Cause, dated August 23, 2022 ("1 Month Notice"), pursuant to section 47; and
- authorization to recover the \$100.00 filing fee paid for her application, pursuant to section 72.

The two landlords, "landlord TV" and landlord RV ("landlord"), the tenant, and the tenant's two support people, "tenant BJ" and "tenant BF," attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 70 minutes from 11:00 a.m. to 12:10 p.m.

The two landlords confirmed their names and spelling. The tenant confirmed the names and spelling for her and her two support people. Landlord TV and the tenant provided their email addresses for me to send this decision to both parties after the hearing.

The two landlords confirmed that they co-own the rental unit. Landlord TV provided the rental unit address. The landlord confirmed that he would be the primary speaker for the landlords at this hearing and landlord TV agreed to same.

The tenant stated that her two support people attended this hearing to provide moral support to her only. She said that she did not want them to participate or testify at this hearing.

The tenant confirmed that tenant BJ wrote a witness letter for her, for this hearing, but the tenant did not want her to testify as a witness at this hearing. I informed the tenant that if she wanted tenant BJ to provide witness testimony at this hearing, the witness could be excluded from the outset, so she could not listen to the proceedings or testimony of both parties, and then the witness could return to testify. This is as per Rule 7.20 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("*Rules*"). The tenant refused, stating that she did not want tenant BJ to testify.

Rule 6.11 of the RTB *Rules* does not permit recordings of any RTB hearings by any participants. At the outset of this hearing, the two landlords separately affirmed, under oath, that they would not record this hearing. At the outset of this hearing, the tenant affirmed, under oath, that neither she, nor her two support people, would record this hearing.

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. I informed them that I could not provide legal advice to them or act as their agent or advocate. They had an opportunity to ask questions, which I answered. Neither party made any adjournment or accommodation requests.

Both parties confirmed that they did not want to settle this application, they were ready to proceed with this hearing, and they wanted me to make a decision. Both parties were given multiple opportunities to settle and declined. Both parties were given ample and additional time during this hearing and discussed settlement but declined to settle this application.

I repeatedly cautioned the tenant that if I dismissed her application without leave to reapply, I would uphold the landlords' 1 Month Notice, end this tenancy, and issue a two (2) day order of possession against the tenant. The tenant repeatedly affirmed that she was prepared for the above consequences if that was my decision.

At the outset of this hearing, the tenant stated that she would file for a review of my decision. I informed the tenant that she could only file for a review if she met one of the three criteria in section 79 of the *Act*. The landlords provided video evidence with their

application, which was uploaded to the online RTB dispute access site on December 30, 2022, where the tenant stated that she would file for a review of this hearing.

I repeatedly cautioned the two landlords that if I dismissed their application without leave to reapply, I would cancel their 1 Month Notice, I would not issue an order of possession against the tenant, and this tenancy would continue. Both landlords repeatedly affirmed that they were prepared for the above consequences if that was my decision.

#### Preliminary Issue – Service of Documents

The tenant confirmed receipt of the landlords' application for dispute resolution hearing package. In accordance with section 89 of the *Act*, I find that the tenant was duly served with the landlords' application.

The landlord stated that the landlords did not receive the tenant's application for dispute resolution hearing package. The tenant stated that she sent her application by registered mail to the landlord on September 2, 2022. She provided a Canada Post receipt and confirmed the tracking number verbally during this hearing. She said that she sent it to the landlord's address. She claimed that the mail was returned to her. She said that she did not send a copy of her application to landlord TV.

I informed the tenant that the notice of hearing for her application was dated September 22, 2022, so she could not have mailed her notice of hearing and application package to the landlord on September 2, 2022, prior to the notice being issued.

I looked up the Canada Post tracking number provided by the tenant on the Canada Post website. It indicates that the tenant sent her application by mail on September 22, 2022, and it was returned to the tenant as unclaimed on October 27, 2022. Unclaimed mail does not avoid the deeming provisions of section 90 of the *Act*. The tenant provided the landlord's mailing address during this hearing and the landlord confirmed that was his mailing address. The tenant only named the landlord in her application, not landlord TV. Only the landlord is named in the 1 Month Notice, not landlord TV.

In accordance with sections 89 and 90 of the *Act*, I find that the landlord was deemed served with the tenant's application on September 27, 2022, five days after its registered mailing on September 22, 2022. I considered the tenant's application and evidence in this decision.

The tenant confirmed personal receipt of the landlords' 1 Month Notice on August 23, 2022. The landlord confirmed the above service date and method. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the landlords' 1 Month Notice on August 23, 2022.

### Issues to be Decided

Should the landlords' 1 Month Notice be cancelled? If not, are the landlords entitled to an order of possession for cause?

Is either party entitled to recover the filing fee paid for their application?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of both parties' claims and my findings are set out below.

The landlord and the tenant agreed to the following facts. This tenancy began on October 1, 2017. Monthly rent in the current amount of \$1,100.00 is payable on the first day of each month. The tenant paid a security deposit of \$550.00 and a pet damage deposit of \$200.00, and the landlords continue to retain both deposits in full. The tenant continues to reside in the rental unit. The landlords and the tenant live at the same residential property in separate suites, and they do not share a kitchen or bathroom with each other.

The landlord confirmed that the landlords seek an order of possession based on the 1 Month Notice. The tenant confirmed that she is disputing the landlords' 1 Month Notice.

The landlord and the tenant agreed that the landlords' 1 Month Notice indicates an effective move-out date of September 30, 2022, and was issued for the following reason, which was read aloud by the landlord and the tenant during this hearing:

- *Tenant or a person permitted on the property by the tenant has:*
  - *significantly interfered with or unreasonably disturbed another occupant or the landlord.*

The landlord testified regarding the following facts. He read aloud a written statement during this hearing. The landlord sent a letter to the tenant regarding her intoxication behavior in December 2017. The previous neighbor "P" moved out of her property. On August 22, 2022, the landlords returned from a celebration of life and the tenant knocked on their door. The tenant was in an intense dispute for the last two months with her neighbor. The landlords told the tenant that it was not a good idea for her to go to the neighbor's house and they asked the tenant to go back to her rental unit. The tenant called victim services and they performed a wellness check. The police officer came and the landlord provided a police file number. The tenant sat on the ground, started throwing stuff in the yard, and the landlords' kids told them about it. The tenant was then cutting the bush and throwing it over the fence in the yard. The tenant was stumbling around and covered in blood. The tenant swore at the landlord and slammed the door. The tenant then banged on the landlords' door and was incoherent. The tenant returned to the rental unit, slammed the door, and the landlords told her not to cause any damages. The tenant then slammed her hand into the organ in order to cause noise and disturbance. On August 23, 2022, the tenant was on the porch screaming at the neighbors and she threatened to shoot them and said that she hoped they had ammunition in their gun because she did. Victim services were called and came again. The tenant yelled at the police officer and said to leave her alone. This is unhealthy and the landlords are pursuing an eviction.

The landlord stated the following facts. A police officer was present with the landlords as a witness for the service of the 1 Month Notice to the tenant and a police file number was provided. The tenant said that she would fight the landlords and take them to court. The tenant stepped into landlord TV's face and glared at her and said she could glare at whoever she wants. On September 17, 2022, landlord TV told the tenant to vacate by September 30, 2022, and the tenant said she would dispute the 1 Month Notice. On October 7, 2022, the landlords returned home, and the tenant was on the front doorstep yelling at the landlords. The tenant accused the landlords of moving her items on the doorstep. The tenant asked if the landlords or the neighbors moved her items. The landlords provided video evidence of this incident. On October 12, 2022, the landlords could hear the tenant yelling for her dog and she was stumbling again. It is a regular occurrence for the tenant to be intoxicated. The tenant asked if the landlords had her dog in their garage. The tenant was yelling all night and when the landlord left for work at 5:00 a.m. the next morning, the tenant's dog was there. The landlord provided a video of this incident. On December 30, 2022, the landlord served the tenant with updated copies of the application, the USB stick of the video and photo evidence, and the incident reports from October 7 and 12, 2022.

The tenant testified regarding the following facts. She read aloud a written statement during this hearing. She disputes the landlords' eviction. She has been living at the rental unit for four years. She has an ongoing dispute with her neighbor. The tenant's daughter was murdered and thrown in the bush two years ago. The neighbor ordered food to the tenant's address. The neighbor "M" ran across the lawn. The tenant's "PSTD" was triggered by the neighbor because the tenant was beaten and raped 15 years ago. Landlord TV swears more than the tenant. This would be "amusing" if it was not so "serious." The tenant has never been late in rent and pays cash. The tenant has not been told that she is loud, she dog-sits for the landlords when they are away, she cleans the rental unit, and she is the best tenant. There was an incident where there was a Christmas party, and the taxi driver was flirting with the tenant on the way home. That is why the tenant lives alone with her dog. The tenant thinks that the landlords want to evict her because they want to raise the rent to \$1,600.00 per month. The landlords are able to raise the rent per law but have chosen not to with the tenant. The tenant cannot find another place to live. The tenant's neighbor did not return her grandson's game and it is "evil" to do this to a child.

The tenant stated the following facts. The tenant was hurt in two motor vehicle accidents and has a personal injury lawyer. The tenant had COVID in November and did not serve evidence after that to the landlords. The landlords knew that the tenant drank when she was living across the street. The tenant goes to bed by 8:00 p.m. The tenant provided letters from her witnesses who are her neighbors and she told them not to say anything bad about the landlords. The tenant does not deserve to be evicted. This is a dispute with the tenant's neighbor, so it is not the landlords' business. The tenant's neighbor posted photos of the tenant online on a "hooker" page. The neighbor ordered food to the tenant's house on her daughter's birthday. The woman called and apologized for being a "b" to the tenant. The tenant takes the landlords' garbage, cleans the laundry room, and the landlords said that she is family. The landlords "pay" her with wine, when dog-sits, and they are away. Landlord TV said that she does not care if the tenant drinks in her own home. The tenant is being evicted for financial reasons to raise the rent. The landlords left their dog outside and the tenant called them and brought the dog back in the house. The tenant and landlords have had dinners and barbecues together.

The landlord stated the following facts in response to the tenant's submissions. The landlords have provided significant evidence. They never raised or intended to raise the rent with the tenant. The tenant has provided no information to dispute.

The tenant stated that she paid rent for January 2023 to the landlords.

### Analysis

I find that I have jurisdiction to decide both parties' applications, as they are not excluded by section 4(c) of the *Act*, since the landlords do not share a kitchen or bathroom, with the tenant, at the residential property.

### Credibility

I found the testimony of the landlord was clear, convincing, credible, and consistent. I found that he provided his testimony in a calm, candid, and straightforward manner. I found that his testimony did not change based on my questions. I found that he answered my questions directly and referred to relevant issues, regarding the 1 Month Notice.

Conversely, I found that the tenant was a less credible witness, as compared to the landlord. I found the tenant's testimony to be inconsistent, unclear, and confusing. I found that she provided her testimony in an upset, angry, and agitated manner. I notified her that I found her testimony to be confusing and difficult to follow. She refused to answer many of my questions directly, often discussing irrelevant information, which I cautioned her about, but she continued. I repeatedly asked her to discuss the 1 Month Notice and whether she was disputing same, and she frequently talked about rent, dog-sitting, and other irrelevant matters.

I found that the tenant was not properly prepared for this hearing, as she initially did not even have the 1 Month Notice in front of her during this hearing. I provided the tenant with ample and additional time during this hearing to look for and search through her paperwork, and eventually she located a copy of the 1 Month Notice. The tenant filed her application on August 30, 2022, prior to the landlords' application, which was filed on September 17, 2022. The tenant had ample time of almost 5 months to prepare for this hearing on January 19, 2023.

### Burden of Proof and Rules

During this hearing, I notified the landlords that they had the burden to prove the reason for issuing the 1 Month Notice to the tenant. The *Act*, *RTB Rules*, and Residential Tenancy Policy Guidelines require the landlords to provide evidence of the reason on the notice. The landlords affirmed their understanding of same during this hearing.

Both parties, as the applicants, were provided with documents entitled “Notice of Dispute Resolution Proceeding” (“NODRP”) from the RTB, which contains the phone number and access code to call into this hearing, when they filed their applications.

The NODRP states the following at the top of page 2, in part (emphasis in original):

*The applicant is required to give the Residential Tenancy Branch proof that this notice and copies of all supporting documents were served to the respondent.*

- *It is important to have evidence to support your position with regards to the claim(s) listed on this application. For more information see the Residential Tenancy Branch website on submitting evidence at [www.gov.bc.ca/landlordtenant/submit](http://www.gov.bc.ca/landlordtenant/submit).*
- *Residential Tenancy Branch Rules of Procedure apply to the dispute resolution proceeding. View the Rules of Procedure at [www.gov.bc.ca/landlordtenant/rules](http://www.gov.bc.ca/landlordtenant/rules).*
- *Parties (or agents) must participate in the hearing at the date and time assigned.*
- *The hearing will continue even if one participant or a representative does not attend.*
- *A final and binding decision will be sent to each party no later than 30 days after the hearing has concluded.*

The NODRP states that a legal, binding decision will be made in 30 days and links to the RTB website and the *Rules* are provided in the same document. During this hearing, I informed both parties that I had 30 days to issue a written decision, after this hearing date. Both parties affirmed their understanding of same during this hearing.

Both parties received detailed application packages from the RTB, including the NODRP documents, with information about the hearing process, notice to provide evidence, and links to the RTB website. It is up to both parties to be aware of the *Act*, *Regulation*, *RTB Rules*, and Residential Tenancy Policy Guidelines. It is up to both parties to provide sufficient evidence of their claims, since they each chose to file their applications on their own accord.

The following RTB *Rules* are applicable and state the following, in part:

#### *7.4 Evidence must be presented*



*Evidence must be presented by the party who submitted it, or by the party's agent...*

...

*7.17 Presentation of evidence*

*Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...*

*7.18 Order of presentation*

*The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...*

I find that the tenant did not properly present her evidence, as required by Rule 7.4 of the RTB *Rules*, despite having multiple opportunities to do so, during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules*.

This hearing lasted 70 minutes, so the tenant had ample time to present her evidence and respond to the landlords' submissions. I repeatedly asked the tenant if she had any other information to present and if she wanted to respond to the landlords' submissions, during this hearing.

*Findings*

On a balance of probabilities and for the reasons stated below, I make the following findings based on the evidence and testimony of both parties.

In accordance with section 47(4) of the *Act*, the tenant must file her application for dispute resolution within 10 days of receiving the 1 Month Notice. In this case, the tenant claimed that she received the 1 Month Notice on August 23, 2022, and filed her application to dispute it on August 30, 2022. Accordingly, I find that the tenant's application was filed within the 10-day time limit under the *Act*. Where the tenant applies to dispute a 1 Month Notice within the time limit, the onus is on the landlords to prove the grounds on which the 1 Month Notice is based. I informed both parties of the above information during this hearing and they affirmed their understanding of same.

I am satisfied that the landlords issued the 1 Month Notice for a valid reason. I find that the landlords provided sufficient evidence that the tenant significantly interfered with and unreasonably disturbed the landlords at the residential property.

I accept the affirmed testimony of the landlord at this hearing and the landlords' documentary evidence submitted in support of their application. I find that the landlords provided sufficient evidence that the tenant engaged in a pattern of significant interference and unreasonable disturbance of the landlords at the residential property. The tenant's behaviour continued even after the 1 Month Notice was issued to her. I accept the landlords' evidence that the tenant has been frequently intoxicated with alcohol, yelling and accusing the landlords, throwing items, making loud noises, engaging in an ongoing dispute including threats to her neighbour, and that the police have been called to deal with disturbances from the tenant. I accept that the landlords and their children have been affected by these incidents.

I find that the landlords provided sufficient evidence regarding incidents that occurred involving them and the tenant on August 22, August 23, September 17, October 7, and October 12, 2022. The landlord testified regarding these incidents and the landlords provided documentary evidence, including timelines, written accounts, and videos, which the tenant did not dispute, during this hearing.

I find that the tenant did not dispute the police file numbers provided by the landlord during this hearing or the attendance of the police at the rental unit. The tenant, in fact, agreed that the police attended at the rental unit and that she had to deal with them, regarding her behaviour. The tenant did not dispute the landlord's testimony that the tenant threatened to shoot her neighbour and hoped they had enough ammunition to do so, since she did. The tenant did not deny being repeatedly intoxicated, claiming instead that the landlords knew that she drank when she lived across the street, and stating that the landlords gave her wine as gifts to watch their dog, while the landlords were away.

I find that the tenant did not provide sufficient evidence to dispute the landlords' 1 Month Notice. The tenant stated that she provided witness statements from all her neighbours, as evidence for this hearing. I informed her during this hearing, that she did not produce any of these witnesses to testify at this hearing to verify the authenticity or contents of their statements, or to be cross-examined by the landlords.

I find that the landlords did not waive their right to enforce the 1 Month Notice against the tenant. The landlords did not withdraw their 1 Month Notice, they did not withdraw or cancel their application, and they continued to pursue an eviction of the tenant at this hearing. The landlords provided video evidence with their application, which was uploaded to the online RTB dispute access site on December 30, 2022, showing that they personally provided a "use and occupancy only" receipt to the tenant for rent paid.

Accordingly, I grant the landlords' application for an order of possession for cause. I dismiss the tenant's application to cancel the landlords' 1 Month Notice.

In accordance with section 47(5) of the *Act*, this tenancy ended on September 30, 2022, the effective date on the 1 Month Notice. In this case, this required the tenant and any occupants on the premises to vacate the premises by September 30, 2022. As this has not occurred, I find that the landlords are entitled to a two (2) day order of possession against the tenant, pursuant to section 55 of the *Act*. The effective date of September 30, 2022, on the notice, has long passed, as the date of this hearing is January 19, 2023. I find that the landlords' 1 Month Notice complies with section 52 of the *Act*.

During this hearing, the tenant stated that she paid rent for January 2023 to the landlords and asked if she would have to vacate in 2 days, if she was unsuccessful in her application. I informed the tenant that I would still issue a 2-day order of possession against her, if she was unsuccessful in her application. The tenant affirmed her understanding of same.

As the landlords were successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the tenant. I order the landlords to retain \$100.00 from the tenant's security deposit of \$550.00, in full satisfaction of the monetary award. The remainder of the tenant's security deposit of \$450.00, is to be dealt with at the end of this tenancy, in accordance with section 38 of the *Act*.

As the tenant was unsuccessful in her application, I find that she is not entitled to recover the \$100.00 filing fee from the landlords. This claim is dismissed without leave to reapply.

### Conclusion

The tenant's entire application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord(s) effective two (2) days after service on the tenant. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the landlords to retain \$100.00 from the tenant's security deposit of \$550.00, in full satisfaction of the monetary award for the filing fee. The remainder of the tenant's

security deposit of \$450.00, is to be dealt with at the end of this tenancy, in accordance with section 38 of the *Act*.

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 19, 2023

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Residential Tenancy Branch