



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OLC

### Introduction

The Tenants seek the following relief under the *Residential Tenancy Act* (the “Act”):

- an order pursuant to s. 47 cancelling a One-Month Notice to End Tenancy signed on September 12, 2022 (the “One-Month Notice”); and
- an order pursuant to s. 62 that the landlord comply with the Act, Regulations, and/or the tenancy agreement.

T.R. appeared as the Tenant. The Tenant was joined by her support worker S.-L.C..  
H.G. appeared as the Landlord.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other’s application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other’s application materials.

### Preliminary Issue – Tenants’ Claims

Pursuant to Rule 2.3 of the Rules of Procedure, claims in an application must be related to one another. Where they are not sufficiently related, I may dismiss portions of the application that are unrelated. Hearings before the Residential Tenancy Branch are

generally scheduled for one-hour and Rule 2.3 is intended to ensure disputes can be addressed in a timely and efficient manner.

In the present instance, the Tenants claim to cancel the One-Month Notice and an order that the Landlord comply. The primary issue in the application is whether the tenancy will continue, or end, based on the One-Month Notice. I say this because if the tenancy is found to end, then the claim that the Landlord comply is moot. There is further issue that nothing ties the claims together as both have separate considerations, require separate findings, and have separate onuses of proof.

I find that the Tenants' claim under s. 62 of the *Act* is not sufficiently related to the primary issue in dispute, being the enforceability of the One-Month Notice. Accordingly, this portion of the claim is severed. If the tenancy continues, the claim under s. 62 will be dismissed with leave to reapply. Should the tenancy end, it will be dismissed without leave to reapply.

The hearing proceeded strictly on the issue of the enforceability of the One-Month Notice.

#### Issues to be Decided

- 1) Should the One-Month Notice be cancelled?
- 2) If not, is the Landlord entitled to an order of possession?

#### Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following aspects of the tenancy:

- The Tenant moved into the rental unit on November 1, 2019.
- Rent of \$2,000.00 is due on the first day of each month.
- A security deposit of \$1,000.00 was paid to the Landlord.

A copy of the tenancy agreement was provided to me by the Landlord. I understand from the parties that the rental unit is a single detached home with a basement suite. The subject rental unit is the upper section of the property.

The Landlord testified that the One-Month Notice was posted to the Tenant's door, though could not recall the date. The Tenant confirms receiving the One-Month Notice saying she found it on her door on September 12, 2022.

Both parties provided me with a copy of the One-Month Notice, which lists its effective date as October 31, 2022. The One-Month Notice lists as its causes the following:

- the Tenant is repeatedly late in paying rent;
- the Tenant or a person permitted on the property by the Tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the Landlord;
  - seriously jeopardized the health or safety or lawful right of another occupant or the Landlord; and
  - put the Landlord's property at significant risk;
- the Tenant or a person permitted on the property by the Tenant has engaged in illegal activity:
  - that has, or is likely to damage the Landlord's property; and
  - that has, or is likely to adversely jeopardize a lawful right or interest of another occupant or the Landlord.

In the detail of cause section within the One-Month Notice, the Landlord described the causes for ending the tenancy as follows:

On September 8, 2022, I visited the property in order to repair the tub and sink drain. [K.A.] alleged husband who isn't on my tenancy contract verbally abused me and grabbed me from my neck. He came so close to my face on purpose to yell at me and tried to spit on my face. [K.A.] also abuse me and in her words said "I will kill the landlord". The man's name is [L.C.] and upon reporting this incident to the police (Case Number 22-[XXXXXX]) it was made clear by the neighbors to the police that this man is at the property everyday and has created issues with other neighbors as well. As per [the Tenant] he also broke our fence last year as he drove his car into it and we have requested [the Tenant] to fix it multiple time however she says it wasn't his fault and that her son-in-law [L.] broke it. This man is also know to the police so I no longer fee safe entering the house. I am a abiding citizen of the city and have never encountered such hatred or verbal abuse and I don't with to rent my property to any of them any longer as my family and myself don't feel safe going back to the house with them residing there.

I have redacted personal identifying information from the excerpt above in the interest of the parties' privacy.

The Landlord testified that he went to the rental unit to fix a tub drain on September 8, 2022. He says he was given access into the house and went to the washroom to go about his work when L. came and asked him to move his van. I understand that the Landlord's vehicle was parked behind L.'s vehicle. The Landlord testified that he went down to move his van and when he was putting his tools away L. approached him and began to yell at him. The Landlord testified that L. grabbed his neck and jumped on him. According to the Landlord, he eventually got into his van and L. began to hit his van. During this incident, the Landlord says he was on the phone with his wife and that altercation resulted in the call being dropped.

The Landlord says that he backed out his vehicle out, L. left, and that his wife came to the property due to being scared for his welfare following the dropped call. After his wife arrived, an argument took place and the Landlord says he spoke with the Tenant. It was during this subsequent argument that the Landlord says he heard the Tenant's daughter say that they should kill the Landlord. The Landlord testified that he does not feel safe going to the property and does not feel safe sending family members there either.

The Tenant says that she was looking after her grandchildren in the house waiting on hold with her internet service provider. According to the Tenant, she was unaware that the Landlord was at the property fixing the tub as she did not ask for him to come on that day. The Tenant says that she asked the Landlord to fix the tub drain some six months prior to September 8, 2022. The Tenant says that she heard yelling outdoors and went to take a look seeing both the Landlord and L. in their vehicles. According to the Tenant, the Landlord and his wife came to the door and the Landlord's wife began to yell and scream at the Tenant. The Tenant denies hearing her daughter say that they should kill the Landlord.

The Tenant further testified that the One-Month Notice lists the wrong daughter, K.A., as L's husband as says that its K.R.. According to the Tenant, L. is no longer K.R.'s partner. The Tenant's support worker, who works for the MCFD, says that K.R. can no longer attend the property either due to a no-contact order. I have not been provided with a copy of the no-contact order. The Landlord testified that he was uncertain of the names of the Tenant's children.

The Tenant did not specifically deny the incident between L. and the Landlord, though both she and her support worker say that L. is no longer a threat to the Landlord as he is no longer K.R.'s partner and K.R. can no longer go to the property. I understand from the Tenant that she cares for her grandchildren.

The Landlord further alleges that the Tenant is frequently late in paying her rent and utilities. According to the Landlord, the Tenant was to pay 75% of the utilities but that this was reduced to 65%, though it is unclear when this occurred. The Landlord says that the Tenant has never paid the water bill, though following the September 8, 2022 incident he decided not to let it go. The Landlord has not provided a copy of written demand to pay the utilities. The Landlord further testified to the Tenant being repeatedly late in paying rent, with his written submissions outlining the receipt of late rent transfers in September 2022, August 2022, and July 2022. However, the Landlord also advises that late payments have improved since issuing the One-Month Notice.

The Tenant says that a portion of her rent is paid for by the provincial government and that there is sometimes a delay in having this portion paid on time. The Tenant further testified that she sends her rent via e-transfer and that it is not her fault when the Landlord deposits the rent. The Tenant's support worker indicates that utilities have been an ongoing issue with the Landlord as he does not frequently send the utility bills and it is unclear how the demands made correspond with the statements.

The parties confirm that the Tenant continues to reside within the rental unit.

### Analysis

The Tenant seeks to cancel the One-Month Notice.

I accept that the One-Month Notice was posted to the Tenant's door, with the Tenant confirming its receipt on September 12, 2022. I find that the One-Month Notice was served on the Tenant in accordance with s. 88 of the *Act* and received on September 12, 2022 as per the Tenant's confirmation.

Under s. 47 of the *Act*, a landlord may end a tenancy for cause by giving a tenant at least one-month's notice to the tenant. Under the present circumstances, the Landlord issued the notice to end tenancy pursuant to ss. 47(1)(b), 47(1)(d), and 47(1)(e) of the *Act*.

As per s. 47(3) of the *Act*, all notices issued under s. 47 must comply with the form and content requirements set by s. 52 of the *Act*. I have reviewed the One-Month Notice and find that it complies with the formal requirements of s. 52 of the *Act*. It is signed and dated by the Landlord, states the address for the rental unit, states the correct effective date, sets out the grounds for ending the tenancy, and is in the approved form (RTB-33).

Pursuant to s. 47(4) of the *Act*, a tenant has 10 days to file an application with the Residential Tenancy Branch to dispute the notice. If a tenant fails to do so, s. 47(5) of the *Act* is triggered such that the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit by the effective date of the notice. The filing deadline and the conclusive presumption are explained at the top of the standard form notice issued at the Residential Tenancy Branch, which states the following:

#### **HOW TO DISPUTE THIS NOTICE**

You have the right to dispute this Notice **within 10 days** of receiving it, by filing an Application for Dispute Resolution with the Residential Tenancy Branch online, in person at any Service BC Office or by going to the Residential Tenancy Branch Office at #400 - 5021 Kingsway in Burnaby. If you do not apply within the required time limit, you are presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date of this Notice.

Upon review of the information on file and in consideration of Rule 2.6 of the Rules of Procedure, I find that the Tenant filed her application with the Residential Tenancy Branch on September 23, 2022, which is when the application and her fee waiver was filed. As the Tenant confirmed receipt of the One-Month Notice on September 12, 2022, I find that she failed to file her application within the 10 days permitted under s. 47(4) of the *Act*. The Tenant did not file for a time extension under s. 66 of the *Act* nor did she make submissions on this point. Accordingly, I find that s. 47(5) of the *Act* has been triggered such that the Tenant is conclusively presumed to have accepted the end of the tenancy and ought to have vacated by the effective date set out in the notice, which was October 31, 2022. The application to cancel the One-Month Notice is hereby dismissed.

Section 55(1) of the *Act* provides that where a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with s. 52, then I must grant the

landlord an order for possession. As that is the case here, I hereby grant the Landlord an order of possession.

Policy Guideline #54 provides guidance with respect to determining the effective date of an order of possession and states the following:

An application for dispute resolution relating to a notice to end tenancy may be heard after the effective date set out on the notice to end tenancy. Effective dates for orders of possession in these circumstances have generally been set for two days after the order is received. However, an arbitrator may consider extending the effective date of an order of possession beyond the usual two days provided.

While there are many factors an arbitrator may consider when determining the effective date of an order of possession some examples are:

- The point up to which the rent has been paid.
- The length of the tenancy.
  - e.g., If a tenant has lived in the unit for a number of years, they may need more than two days to vacate the unit.
- If the tenant provides evidence that it would be unreasonable to vacate the property in two days.
  - e.g., If the tenant provides evidence of a disability or a chronic health condition.

An arbitrator may also canvas the parties at the hearing to determine whether the landlord and tenant can agree on an effective date for the order of possession. If there is a date both parties can agree to, then the arbitrator may issue an order of possession using the mutually agreed upon effective date.

Ultimately, the arbitrator has the discretion to set the effective date of the order of possession and may do so based on what they have determined is appropriate given the totality of the evidence and submissions of the parties.

I note that this has been a relatively long tenancy. I accept that the Tenant cares for her grandchildren, who reside in the rental unit with her. I am further cognizant that rent is paid on the first of each month. Though allegations are made that rent has been late, the Landlord does not say rent has been unpaid. Indeed, it appears the Tenant has been timelier in her payments since the One-Month Notice was served as per the Landlord's evidence. Given the length of the tenancy, rent being due on the first, and

the fact the Tenant cares for her minor grandchildren, I make the order of possession effective for January 31, 2023.

### Conclusion

The Tenants are conclusively presumed to have accepted the end of the tenancy due to her failure to file her application within the 10 days permitted under s. 47(4) of the *Act*. Her application to cancel the One-Month Notice is, therefore, dismissed without leave to reapply.

The Landlord is entitled to an order of possession pursuant to s. 55(1) of the *Act*. I order that the Tenants provide vacant possession of the rental unit to the Landlord by no later than **1:00 PM on January 31, 2023**.

As the tenancy is over, the Tenants' claim under s. 62 that was severed at the outset of the hearing is dismissed without leave to reapply.

It is the Landlord's obligation to serve the order of possession on the Tenants. If the Tenants do not comply with the order of possession, it may be filed by the Landlord with the Supreme Court of British Columbia and enforced as an order of that Court.

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 04, 2023

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Residential Tenancy Branch