



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## DECISION

**Dispute Codes**      CNC-MT

### **Introduction**

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 66; and
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

RY and CB appeared for the landlord in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing by the attending parties. Both parties confirmed that they understood.

The tenant confirmed receipt of the landlord's evidence for this hearing. In accordance with section 88 of the *Act*, I find the tenant duly served with the landlord's evidence. The landlord testified that they were not served with the tenant's application and evidentiary materials for this hearing. After the details and contents of the tenant's application was summarized during the hearing, the landlord confirmed that they were ok with the admittance of the tenant's the evidence and proceeding with the scheduled hearing.

The tenant testified that the 1 Month Notice dated September 28, 2022, which was posted on the tenant's door on September 29, 2022. In accordance with sections 88 and 90 of the *Act*, I find the tenant deemed served with the landlord's 1 Month Notice on October 1, 2022, 3 days after posting.

The tenant filed an application for an extension of time to dispute the 1 Month Notice. The tenant's application was filed on October 11, 2022, within the 10 required by the

Act. Accordingly, the tenant's application for more time is not required. The hearing proceeded to deal with the 1 Month Notice to End Tenancy.

### **Issues to be Decided**

Should the landlord's 1 Month Notice be cancelled?

If not, is the landlord entitled to an Order of Possession?

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applications and my findings around it are set out below.

This month-to-month tenancy began on January 1, 2018. Monthly rent is currently set at \$375.00, payable on the first of the month. The landlord had collected a security deposit in the amount of \$176.00, which the landlord still holds.

The landlord served the tenant with a 1 Month Notice to End Tenancy dated September 28, 2022 on the following grounds:

*The tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.*

The landlord testified that they had served the tenant with the 1 Month Notice after multiple warning letters have been issued to the tenant for failing to maintain reasonable health, cleanliness and sanitation standards in their rental unit.

The landlord provided detailed documentation to support the sequence of events that led to the final notice to end tenancy. The tenant was served with a warning letter dated August 12, 2022 after an inspection was done on August 3, 2022. The letter notes that the tenant's room was "full of junk, papers, boxes, dirty objects, and the room was not accessible". The letter also notes that the tenant's room is a fire hazard. The letter stated that the tenant's room would be inspected again on August 19, 2022 to confirm that the tenant had addressed the issues in the letter.

The tenant requested an extension on August 18, 2022, and the room inspection was rescheduled for August 22, 2022. A second warning letter dated August 23, 2022 was served on the tenant after the inspection took place on August 22, 2022. The letter notes that the tenant's room was "full of junk, papers, boxes, and dirty objects", and that

in its current state the tenant's room is a fire hazard. The letter reminded the tenant of their obligation to uphold reasonable health and safety standards, and stated that the tenant would have one week from the date of the letter to comply with the stated requirements. The letter noted a follow-up inspection on August 30, 2022.

A final warning dated August 31, 2022 was served on the tenant after the inspection on August 30, 2022. The letter notes that the tenant's room was "still in a very very bad shape with trash, junk and fowl scent". The letter noted that the landlord would return on September 20, 2022 to re-inspect the room, and noted that "This is your final warning letter".

The landlord received a letter from the tenant on September 1, 2022 informing the landlord that they have someone who will assist the tenant to clean up the rental unit over the upcoming weekend.

A final inspection was completed on September 20, 2022, at which time the staff confirmed that the state of the rental unit remained unchanged, and was an active health and fire safety hazard. The tenant was served with the 1 Month Notice to End Tenancy and accompanying letter of eviction on September 28, 2022.

Since the issuance of the 1 Month Notice to End Tenancy, the fire department attended the unit on November 8, 2022 after the tenant was served with a Notice to Enter on November 3, 2022 for the purpose of a unit condition inspection. The fire department issued a notice of violation on November 8, 2022 which noted several violations, and listed items "for immediate compliance" as follows:

- 1) Ensure all means of egress and access to exists are clear and free of obstructions at all times.
- 2) Remove combustible materials from all heat sources.
- 3) Reduce excessive combustible materials to comply with the intended and designed use of the space
- 4) Reduce combustibles 75%

The Notice of Violation noted that the unit would be re-inspected on November 15, 2022. On November 15, 2022, the fire department attended to re-inspect the unit, and issued a "Do Not Occupy" notice. The landlord provided copies of all the notices and warning letters referenced in this decision, as well as accompanying photographs of the rental unit and inspections.

The landlord testified that despite all the warning letters, inspections, and the Notice to End Tenancy, the tenant has failed to take any action to ensure that the rental unit complies with health, safety, and housing standards. The landlord testified that the situation was getting worse, and the landlord had to hire cleaners to ensure compliance with the notice of violation issued by the fire department. The landlord testified that they have attempted to work with the tenant, and give the tenant ample opportunity to remedy the problem, but there was no improvement. The landlord testified that they had an obligation to ensure the health and safety of the other residents in the building, which houses 78 tenants, and who are mostly seniors.

The tenant testified in the hearing that they do want to clean, but faced many obstacles in doing so. The tenant testified that they have arthritis in their hands, and required the use of a wheelchair, which the landlord did not allow. The tenant also expressed concern that the situation was exaggerated by the landlord as the tenant felt that the landlord held prejudicial views against the tenant for being married to an aboriginal lady. The tenant testified that the landlord wanted the tenant out of the building, and changed the locks on November 15, 2022. The landlord confirmed in the hearing that the locks were changed to comply with the “do not occupy” order from the fire department, and that the tenancy was still in place.

The tenant noted on their application that before the pandemic, the tenant’s room was regularly cleaned by home-care workers, which stopped for over 2.5 years. The tenant also notes that their savings account was frozen for more than 3 years, which meant that the tenant was unable to hire cleaners to help them.

### **Analysis**

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. As the tenant filed their application within the required period, and having issued a notice to end this tenancy, the landlord has the burden of proving that he has cause to end the tenancy on the grounds provided on the 1 Month Notice.

Although the tenant disputed the validity of the 1 Month Notice and the claims and testimony of the landlord, their agents, and the fire department, I find that the landlord provided detailed evidence, including numerous written warnings and photos, which supports the landlord’s concerns that the tenant has failed to maintain the rental unit in a condition that meets healthy and safety standards. Although the interpretation of “clean” may differ from person to person, the main reason for why the 1 Month Notice

was served was the landlord's concern that the tenant has jeopardized the health and safety of the 78 tenants in the building. I find this concern to be supported by the fact that since the issuance of the 1 Month Notice in September 2022, the fire department attended in November and determined that the rental unit was not suitable for occupation due to the multiple safety and fire violations.

Despite the issuance of the previous warning letters, and despite the time afforded to the tenant to ensure that they could improve the condition of the rental unit, the tenant failed to do so. Although the tenant did describe the challenges they faced that prevented them from cleaning their rental unit, the landlord has an obligation to ensure the health and safety of the other residents who also live in this building. As noted by the landlord, the situation has not improved since the issuance of the 1 Month Notice, which led the eventual "do not occupy" notice posted by the fire department. I find that the tenant has failed to maintain their rental unit in a state that meets health and safety standards, and by doing so, the tenant has jeopardized the health and safety of all the residents in the building.

Despite the concerns raised by the tenant that the landlord or their agents were acting in a prejudicial or malicious manner, I find the facts support that the opposite is true. I find that the landlord had given the tenant ample opportunity to take corrective steps before ending this tenancy. I find that the tenant had provided various reasons for why the landlord's 1 Month Notice should not be upheld, and in this case I find that the landlord had met their burden of proof to support that the tenant's actions have, and continue to put the health and safety of others at risk.

For all these reasons, I dismiss the tenant's application to cancel the 1 Month Notice without leave to reapply.

**Section 55(1)** of the *Act* reads as follows:

**55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

A copy of the 1 Month Notice was submitted for this hearing, and I find that the landlord's 1 Month Notice complies with section 52 of the *Act*, which states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that the landlord is entitled to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*.

### **Conclusion**

The tenant's application is dismissed without leave to reapply. I find that the landlord is entitled to an Order of Possession.

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed 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: February 14, 2023

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Residential Tenancy Branch