



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **CNC-MT, CNE, OPC, FFL**

### **Introduction**

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties pursuant to the Residential Tenancy Act (the "Act") for Orders as follows:

The tenants applied as follows:

- For more time to apply to cancel the landlords' One Month Notice to End Tenancy ("One Month Notice") pursuant to section 66 of the Act
- For an order cancelling the One Month Notice pursuant to section 47 of the Act

The landlord applied as follows:

- For an order of possession pursuant to section 55 of the Act
- For reimbursement of the filing fee pursuant to section 72 of the Act

The landlord RP appeared. The tenants did not appear. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

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

The landlord testified that she served the One Month Notice to End Tenancy dated August 24, 2022 with an effective date of September 30, 2022 on the tenants personally on August 26, 2022 when they picked up their mail from the landlord. Pursuant to sections 88 and 90 of the Act the tenants are found to have been served with the notice in accordance with the Act.

The landlord testified that she served her dispute notice and evidence in support of her application on the tenant LG on January 31, 2023 by handing him the package personally, and on the tenant SM by affixing the package to the door of the rental unit on January 31, 2023. I find the tenant LG was served January 31, 2023 and the tenant SM is deemed served February 3, 2023 in accordance with sections 88, 89 and 90 of the Act.

### Preliminary Issue

The landlord provided information with respect to the correct names of the landlord and tenants as per the tenancy agreement. As a result, the style of cause is amended accordingly to reflect the parties' correct names pursuant to section 64(3)(c).

### Issue(s) to be Decided

1. Did the tenants file their dispute notice within the legislated time frame? If not, do exceptional circumstances apply to extend the filing deadline?
2. Is the One Month Notice valid and enforceable against the tenant? If so, is the landlord entitled to an order of possession?
3. Is the landlord entitled to recover the filing fee for this application?

### Background and Evidence

The tenancy agreement and addendum were provided in evidence. The tenancy commenced on April 1, 2019 and is currently on a month to month basis. Rent is \$900.00 per month due on the first of the month. The landlord holds a security deposit of \$400.00 and a pet deposit of \$200.00 in trust for the tenants. The tenants still occupy the rental unit.

The landlord testified that the rental unit is extremely messy and unclean to the point of being a hazard. There is excessive debris both inside and outside the rental unit. She produced photos in evidence depicting the condition of both the inside and outside of the rental unit.

The landlord further testified that the furnace broke in the rental unit and the company she hired to repair the furnace refused to enter the residence due to the debris within

the unit. She did not provide a date or any documentation from the repair company confirming this information.

The landlord also testified that she was advised by her insurance company that they would no longer insure her property if the rental unit was not cleaned up by the end of January, 2023. The landlord provided a letter from the insurance company dated January 20, 2023 in evidence corroborating this evidence. She also provided a photo in evidence of the letter from the insurance company posted to the door of the rental unit.

The landlord provided a text message sent to the tenants on July 27, 2022 advising them to clean up the debris in the rental unit.

### 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.

### *Tenants' Application*

The tenants applied for more time to dispute the One Month Notice. The tenants have the onus to establish that they were unable to file their dispute application within the requisite time period. RTB Policy Guideline 36 states in part:

The Residential Tenancy Act and the Manufactured Home Park Tenancy Act provide that an arbitrator may extend or modify a time limit established by these Acts only in exceptional circumstances. An arbitrator may not extend the time limit to apply for arbitration beyond the effective date of a Notice to End a Tenancy and may not extend the time within rent must be paid without the consent of the landlord.

### **Exceptional Circumstances**

The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court

noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.

As the tenants did not appear or provide any explanation for their late filing, their application is dismissed.

### *Landlord's Application*

The landlord is seeking an order of possession based on the One Month Notice. On the One Month Notice, the landlord provided the tenants with several reasons for ending the tenancy for cause. The only ground that I will address is that the tenants breached a material term of the tenancy agreement that was not corrected after being given written notice to do so.

The addendum to the tenancy agreement contains the following clause:

**The Tenant shall keep the house clean and free of fowl odours or shall pay to have them cleaned.**

I have viewed the photos of the property provided in evidence by the landlord. The number of items and debris located inside and outside the rental unit is extraordinary and I find the excessive debris has caused the landlord to suffer consequences such as the loss of property insurance. In particular, the photo of the hallway of the unit shows the presence of debris to the extent that the hallway is impassable.

I find that the tenants were given written notice to remove the debris in the text message sent in July 2022 advising them to remove the debris and clean up the rental unit and they were given until August 24, 2022, the day the One Month Notice was served, to clean up the mess. They did not do so as evidenced by the letter from the insurance company dated January 23, 2023.

I further find that the term of the tenancy agreement breached by the tenants was a material term. This is evidenced by the fact that the landlord is unable to have the furnace in the rental unit repaired, and the fact that her insurance company will no longer provide insurance for the property.

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 tenants' application. As section 55(1) of the Act is satisfied, the landlord is entitled to an order of possession effective on February 28, 2023 at 1:00 pm.

The landlord is successful in her application. Therefore, she is also entitled to recover the filing fee for the application.

### Conclusion

The landlord is granted an order of possession which will be effective February 28, 2023 at 1:00 pm. The order of possession must be served on the tenants. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The landlord is also permitted to deduct \$100.00 from the tenants' security deposit in satisfaction of the filing fee.

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 22, 2023

---

Residential Tenancy Branch