



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Greater Victoria Housing Society  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      CNC

### **Introduction**

This hearing dealt with the Tenant's application under section 47 of the *Residential Tenancy Act* (the "Act") to cancel a One Month Notice to End Tenancy for Cause dated September 12, 2022 (the "One Month Notice").

The Landlord's agents LR, RM, and TA attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The Tenant did not attend this hearing. I left the teleconference hearing connection open until 9:52 am in order to enable the Tenant to call into the hearing scheduled to start at 9:30 am. I confirmed that the correct call-in numbers and participant access code had been provided in the notice of dispute resolution proceeding. I used the teleconference system to confirm that the Landlord's agents and I were the only ones who had called into the hearing.

All attendees were advised that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

### **Preliminary Matter – Service of Dispute Resolution Documents**

LR confirmed the Tenant's notice of dispute resolution proceeding package (the "NDRP Package") was hand-delivered to the Landlord's office on October 7, 2022. I find the Landlord was served with the NDRP Package in accordance with section 89(1)(b) of the Act.

LR testified the Landlord's documentary evidence was sent to the Tenant via registered mail (tracking number referenced on the cover page of this decision). The Landlord submitted a signed proof of service form and tracking records which show that the package was sent on January 18, 2023 and delivered on January 30, 2023. I find the Tenant was served with the Landlord's documentary evidence in accordance with section 88(c) of the Act on January 30, 2023.

### Preliminary Matter – Tenant's Non-attendance

Rule 7.3 of the Rules of Procedure states:

#### **7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The Tenant did not attend this hearing for his own application while the Landlord's agents duly attended. As such, I directed that the hearing continue in the absence of the Tenant.

### Issues to be Decided

1. Is the Tenant entitled to cancel the One Month Notice?
2. Is the Landlord entitled to an Order of Possession?

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

This tenancy commenced on July 1, 2009 and is month-to-month. Rent is currently \$735.00 per month due on the first day of each month. The Tenant's portion of the monthly rent is \$422.00, and the remainder is subsidized. The Tenant paid a security deposit of \$299.00.

A copy of the One Month Notice has been submitted into evidence by the Landlord. The One Month Notice has an effective date of October 31, 2022, and states the following reasons for ending the tenancy:

- 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
- Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk

The One Month Notice further provides the following details of cause:

*Failure to maintain unit: after several unit inspections from the landlord, unit fails to meet minimum standard for health, safety and sanitary conditions*

LR confirmed that a copy of the One Month Notice was sent to the Tenant via registered mail on September 12, 2022 and delivered on September 16, 2022. The Landlord submitted a registered mail tracking number and tracking records in support. The Tenant's application also acknowledges receipt of the One Month Notice on September 16, 2022 via registered mail.

LR explained that the Landlord is a non-profit charitable housing organization that provides independent living for tenants using a diverse, inclusive, and trauma-informed approach.

LR testified that the Tenant is not meeting the Landlord's minimum standards for cleanliness in the rental unit, which have been submitted into evidence by the Landlord. LR stated that these standards were developed many years ago in consultation with the local health authority and fire department. LR stated the Landlord has made many attempts to address the Tenant's issues and salvage the tenancy, had implemented inspection and monitoring, referred cleaning support services, and had liaised with mental health teams, but unfortunately the situation has not improved.

LR testified that the Tenant was first referred for an inspection in February 2020. However, this inspection was aborted due to the pandemic. LR testified that in August 2022, field staff referred the Tenant again to housing inspection due to failure to maintain the rental unit. The Landlord submitted into evidence the results of that inspection, which include a condition inspection report, photographs of the rental unit, and a warning letter dated August 11, 2022. This report showed that the Tenant failed to

meet all of the minimum requirements, such as having no moldy food in the kitchen, and having a sufficient percentage of floor space and countertop space available. The report also noted that the rental unit was “extremely dirty”, “smoky”, and “dusty”, with nicotine and food splatters on walls, filthy cupboards, and sticky floors. The Landlord’s warning letter explained how the rental unit doesn’t meet the minimum standards, what the Tenant needed to do to remediate, and includes list of suggested services and cleaners.

LR testified that during a second inspection on September 8, 2022, it was noted that the Tenant had covered the smoke detector in the rental unit with a plastic bag. The Landlord submitted a condition inspection report and photographs dated September 8, 2022, as well as a second warning letter dated September 16, 2022. The report noted that the rental unit still dirty and smoky, with filthy and sticky floors, and that no work had been done since the previous inspection.

LR testified that the Tenant did not attempt to clean and demonstrated a fundamental non-understanding of the ramifications caused by not cleaning. LR stated that the Tenant was referred for a one month notice to end tenancy for cause, and the One Month Notice was issued.

LR testified that further inspections were done on October 27, 2022 and November 16, 2022, during which it was noted that the Tenant still had not done any cleaning. The Landlord submitted into evidence copies of the condition inspection reports and photographs of the rental unit dated October 27, 2022 and November 16, 2022.

LR referred to an email dated November 18, 2022 from DB, the Landlord’s manager of housing, which describes the Tenant’s objections to cleaning and behaviours which indicate that the Tenant may be struggling with mental health issues. LR referred to her email dated November 24, 2022, which describes the Tenant refusing mental health support.

LR noted the Tenant refused entry for an inspection in December 2022. LR confirmed that as of the most recent inspection performed in late January 2023, the state of the rental unit remains the same as before. LR also described an incident this month during which the Tenant threatened several of the Landlord’s staff members.

LR stated that the Landlord seeks an Order of Possession effective the end of this month.

## Analysis

### *1. Is the Tenant entitled to cancel the One Month Notice?*

Section 47 of the Act permits a landlord to end a tenancy for cause upon one month's notice to the tenant. Section 47(1) describes the situations under which the landlord will have cause to terminate the tenancy.

Section 47(3) of the Act requires a notice to end tenancy for cause given by the landlord to comply with section 52, which states:

#### **Form and content of notice to end tenancy**

52 In order to be effective, a notice to end a tenancy 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,
  - (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
- (e) when given by a landlord, be in the approved form.

Section 47(2) further requires that the effective date of a landlord's notice under section 47 must be:

- (a) not earlier than one month after the date the notice is received, and
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In this case, I have reviewed the One Month Notice and find that it complies with the requirements set out in sections 52 and 47(2) of the Act.

I find the Tenant was served with a copy of the One Month Notice in accordance with section 88(c) of the Act on September 16, 2022.

Section 47(4) of the Act permits a tenant to dispute a one month notice to end tenancy for cause within 10 days of receiving such notice. Therefore, the Tenant had until

September 26, 2022 to dispute the One Month Notice. Records indicate that the Tenant submitted this application on September 22, 2022. I find the Tenant made this application within the time limit required by section 47(4) of the Act.

Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, Rule 6.6 of the Rules of Procedure places the onus on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

In this case, the Landlord issued the One Month Notice to end the tenancy on the grounds that the Tenant has “seriously jeopardized the health or safety or lawful right of another occupant or the landlord” and has “put the landlord’s property at significant risk”.

Sections 47(1)(d)(ii) and (iii) of the Act state as follows:

**Landlord’s notice: cause**

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

[...]

(d) the tenant or a person permitted on the residential property by the tenant has

[...]

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

(iii) put the landlord's property at significant risk; [...]

Based on the Landlord’s undisputed testimony and evidence, including the condition inspection reports and photographs of the rental unit, I find the Tenant has allowed the state of the rental unit to deteriorate to the point of not meeting basic standards for health and cleanliness. I find the Landlord tried to support the Tenant and provided opportunities for the Tenant to remediate the situation, but the Tenant has not taken any steps to do so. I am satisfied that the unsanitary state of the rental unit and amount of clutter inside (which I find to pose a serious fire hazard) have seriously jeopardized the health and safety of the other occupants in the building and have put the Landlord’s property at significant risk.

I conclude the Landlord has established cause for ending this tenancy under the One Month Notice pursuant to sections 47(1)(d)(ii) and (iii) of the Act. The Tenant's application to cancel the One Month Notice is dismissed without leave to re-apply.

*2. Is the Landlord entitled to an Order of Possession?*

Section 55(1) of the Act states:

**Order of possession for the landlord**

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.

Having found the One Month Notice to comply with the requirements of section 52 and having dismissed the Tenant's application, I find the Landlord is entitled to an Order of Possession under section 55(1) of the Act.

The effective date of the One Month Notice has already passed, and the Landlord requests an Order of Possession effective the end of this month. As such, I grant an Order of Possession to the Landlord effective 1:00 pm on February 28, 2023.

Conclusion

The Tenant's application is dismissed without leave to re-apply.

Pursuant to section 55(1) of the Act, I grant an Order of Possession to the Landlord effective **1:00 pm on February 28, 2023**. The Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in 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: February 09, 2023

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Residential Tenancy Branch