



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding ST LUKE'S HOME -ST JAMES  
PLACE and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, LRE  
                             OPC, FFL

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”). The matter was set for a conference call.

The Tenant’s Application for Dispute Resolution was made on October 18, 2022. The Tenant applied to cancel a One-Month Notice to End Tenancy for Cause (the “Notice”) dated October 17, 2022, and for an order to suspend or set conditions on the landlord's right to enter the rental unit or site.

The Landlord’s Application for Dispute Resolution was made on April 11, 2019. The Landlord applied for an order of possession to enforce a One-Month Notice to End Tenancy for Cause (the “Notice”) dated October 17, 2022, and to recover the filing fee paid for this application.

Two Agents for the Landlord (the “Landlord”) attended the conference call hearing and were each affirmed to be truthful in their testimony. The Landlord was provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Tenant called into these proceedings late, at approximately 11:04 and disconnected at approximately 11:05, immediately following this Arbitrator explanation of who was in attendance at these proceedings. The Tenant was not in attendance long enough to be affirmed into these proceedings or offer any testimony on their claim.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Issues to be Decided

- Should the Notice to End Tenancy dated October 17, 2022, be cancelled?
- If not, is the Landlord entitled to an order of possession pursuant to section 55 of the *Act*?
- Should the Landlord's right to enter the rental unit be suspend or have set conditions?
- Is the Landlord entitled to the return of his filing fee?

### Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The Landlord testified that the tenancy began on July 25, 2019, that rent for this rental unit is set at \$813.00 per month, that the rent is subsidized with the Tenant's portion currently set at \$375.00 per month. The Landlord confirmed that they collected a \$406.50 security deposit for this tenancy. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The Landlord testified that they served the Notice to the Tenant on October 17, 2022, by attaching a copy of the Notice to the front door of the rental unit. The Notice recorded an effective date of November 30, 2022. The Landlord submitted a copy of the Notice into documentary evidence. The reason checked off within the Notice is as follows:

- 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 that the Tenant has been causing problems at the rental property for several years, that they have spoken to the Tenant several times regarding their

behaviour, and that they had issued three warning letters to the Tenant before issuing the Notice to end tenancy.

The Landlord testified that they had received numerous verbal and written complaints regarding the Tenant; consisting of noise complaints of the Tenant banging on the ceiling, making unreasonable noise late at night, complaints of the Tenant banging on the doors to other units and trying to use their keys to gain access to other occupied units, for making false police complaints regarding other occupants of the building, and disrespecting the privacy of the other occupants of the building. The Landlord submitted provided five letters of complaint regarding the Tenant and copies of four written warnings issued to the Tenant into documentary evidence.

The Landlord is requesting that the Notice to end tenancy be enforced, and requested an order of possession is issued.

### Analysis

Based on the above, the oral testimony and the documentary evidence, and on a balance of probabilities, I find as follows:

I accept the testimony of the Landlord that they served the Tenant with the Notice to end on October 17, 2022, by posting the notice to the front door of the rental unit. I find that the Tenant was deemed to have received the Notice three day later, as per the deeming provisions set out in section 90 of the Act, and that the Tenant did apply to dispute the Notice.

The Tenant's application to dispute the Notice was set for hearing by a telephone conference call at 11:00 a.m. on this date. The Tenant did attend the hearing, arriving at approximately 11:04; however, the Tenant disconnected from the hearing at approximately 11:05, without offering any testimony on their application. The line remained open while the phone system was monitored until 11:12, and the Tenant did not dialed back into these proceedings during this time. Therefore, I find that the only party who attended the hearing and participated in these proceedings was the Landlord.

Rules 7.1, 7.3 and 7.4 of the Rules of Procedure provide as follows:

#### **7.1 Commencement of the dispute resolution hearing**

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

### **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.

### **7.4 Evidence must be presented**

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Therefore, as the Tenant did not attend the hearing, I dismiss the Tenant's application without leave to reapply.

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.*

I have reviewed the Notice to end the tenancy, and I find the Notice complies with section 52 of the *Act*.

I have also reviewed the Landlord's testimony and the documentary evidence received by the Residential tenancy Branch from both the Landlord and the Tenant and I find that there is sufficient evidence before me to prove to my satisfaction that the Tenant has significantly interfered with and unreasonably disturbed the other occupants of the rental property.

Therefore, I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the *Act*. I grant the Landlord an **Order of Possession** effective **two days** after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that the costs of such enforcement are recoverable from the tenant.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in their application, I find the Landlord is entitled to recover the \$100.00 filing fee these proceedings. I grant permission to the Landlord to retain \$100.00 from the security deposit for this tenancy in full satisfaction of this award.

### Conclusion

The Tenant's application is dismissed without leave to reapply.

I grant an **Order of Possession** to the Landlord effective not later than **2 days** after service upon the Tenant. The Tenant must be served with this Order. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I grant permission to the Landlord to retain \$100.00 from the security deposit for this tenancy in full satisfaction of the amount awarded in this decision.

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 27, 2023

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Residential Tenancy Branch