



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding YARD INVESTMENT INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, OLC, FFT

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a tenancy. On October 4, 2022, the tenant applied for:

- an order to cancel a One Month Notice to End Tenancy for Cause, dated September 21, 2022 (the One Month Notice);
- an order for the landlord to comply with the Act, regulation, or tenancy agreement; and
- the filing fee.

The hearing was attended by the tenant, his father, and the landlord's agent ("the landlord"). Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

Neither party raised an issue regarding service of the hearing materials.

### Preliminary Matter

The Residential Tenancy Branch Rules of Procedure 2.3 states:

**2.3 Related issues** Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As it is not related to the central issue of whether the tenancy will continue, I dismiss, with leave to reapply, the tenant's claim for an order for the landlord to comply with the Act, Regulation, and/or tenancy agreement.

### Issues to be Decided

- 1) Is the tenant entitled to an order to cancel the One Month Notice?
- 2) If not, is the landlord entitled to an order of possession?
- 3) Is the tenant entitled to the filing fee?

### Background and Evidence

The parties agreed that the tenancy began in 2012 with a different landlord, and rent is due on the first of the month.

The landlord testified rent is \$872.00; the tenant testified rent is “871 something,” but that he pays \$872.00. The landlord testified no security deposit was paid; the tenant’s father testified that at the beginning of the tenancy, with the previous landlord, he paid a security deposit of \$400.00.

The landlord testified the One Month Notice was served on the tenant on September 21, 2022 by email; the tenant testified he received the Notice the same day.

A copy of the One Month Notice is submitted as evidence. It is signed and dated by the landlord, gives the address of the rental unit, states an effective date, gives the grounds for the Notice, and is in the approved form. Page 2 indicates the reasons for the Notice are:

- the tenant has allowed an unreasonable number of occupants in the unit/property/park;
- the tenant is repeatedly late 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; and
  - seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and
- the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant of the property.

The Details of the Event(s) section refers to the tenant having many people in the unit at night, being noisy, and disturbing the neighbours.

Regarding the allegation that the tenant has allowed an unreasonable number of occupants in the unit, the landlord testified the tenant has had up to 5 visitors to the unit. The landlord confirmed these are visiting guests, not people who have moved into the unit.

The landlord testified the tenant paid rent late for October 2022, but paid on time for November 2022 through February 2023. Submitted as evidence are screenshots of rent payments from earlier months, showing that rent payment was frequently late. The tenant testified that due to the pandemic his hours had been cut, and that as a result he had had some difficulty paying rent.

Regarding the allegation the 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 had guests in and out of his unit, especially at night, between 10:00 pm and 5:00 am. The landlord testified this occurred on August 1, September 19 and 20, and on October 28, 2022. The landlord also testified this occurred almost every day in August and September, 2022. The landlord referred to videos submitted as evidence. They are numerous, from various dates in August and September, and from October 28, 2022.

The landlord testified that neighbours of the tenant's moved out in January 2023, stating that their move was because they could not sleep due to noise produced by the tenant and his guests.

Regarding the allegation that 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 intoxicated guests of the tenant have been very noisy and disturbed the sleep of other tenants.

Regarding the allegation that the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant of the property, the landlord testified that the tenant or his guests admit people to the building who make lots of noise, disturbing the sleep of other tenants. The landlord testified that a guest of the tenant was caught on camera marking a wall of the building with graffiti.

The tenant acknowledged that due to his work schedule he does arrive home late. The tenant testified that since renovations were done to the building, there is no carpeting in the hallway, and as a result, even taking a step produces considerable noise.

The tenant testified that on October 28, 2022, he permitted an injured relative to stay over, and that his relative admitted a questionable person to the common area of the building. The tenant testified he would have called the police, had he known.

The tenant testified that there was one occasion when he and his guests were loud, noting that it was a night they had gathered to make dinner following the death of his girlfriend.

The tenant testified that he has lived in the rental unit for almost a decade, and has never previously had an issue.

### Analysis

Section 47(4) of the Act provides that upon receipt of a One Month Notice, the tenant may, within 10 days, dispute the Notice by filing an application for dispute resolution with the Residential Tenancy Branch.

Based on the parties' testimony, I find the landlord sufficiently served the One Month Notice on the tenant by email on September 21, 2022, pursuant to section 71 of the Act, and that the tenant received it on the same day.

I find that the landlord's One Month Notice meets the form and content requirements of section 52 of the Act as it is signed and dated by the landlord, gives the address of the rental unit, states an effective date of the Notice, states the reasons for ending the tenancy, and is in the approved form.

I find that the tenant has failed to file an application for dispute resolution within 10 days of September 21, 2022, the timeline granted under section 47(4) of the Act. Accordingly, I find that the tenant is conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ends on the effective date of the One Month Notice, October 31, 2022, and must vacate the rental unit.

Therefore, in accordance with section 55 of the Act, I find the landlord is entitled to an order of possession.

Residential Tenancy Policy Guideline 54. *Ending a tenancy: Orders of Possession* provides that for applications relating to a notice to end tenancy heard after the effective date set out on the notice, orders of possession in these circumstances have generally

been set for two days after the order is received, but that an arbitrator may consider extending the effective date of an order of possession beyond the usual two days. The Guideline states that factors which may be considered by an arbitrator include the point up to which the rent has been paid and the length of the tenancy. Therefore, rather than granting a two-day order of possession, because the tenant has paid rent for February 2023 and has lived in the unit for almost a decade, I order the tenancy will end on February 28, 2023, pursuant to section 68(2)(a) of the Act.

As the tenant is unsuccessful in his application I decline to award the filing fee.

### Conclusion

The tenant's application is dismissed.

The landlord is granted an order of possession which will be effective 1:00 p.m. on February 28, 2023. The order of possession must be served on the tenant. The order of possession 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 23, 2023

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Residential Tenancy Branch