



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

A matter regarding PACIFIC ISLAND COVE PROPERTIES  
LTD. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR-MT, CNC, OLC, FF

### Introduction

This hearing convened to deal with the tenant's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenant applied for an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice), an order extending the time to file an application disputing the 10 Day Notice, an order cancelling the One Month Notice to End Tenancy for Cause (Notice/1 Month Notice) issued by the landlord, an order requiring the landlord to comply with the Act, regulations, or tenancy agreement and recovery of the cost of the filing fee.

The tenant, tenant's daughter/support, and the landlord's agent (agent) attended the hearing. All parties were affirmed. The hearing process was explained, and they were given an opportunity to ask questions about the hearing process. No issues were raised as to service of the tenant's application or evidence.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) . However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

The tenant said they were not served a 10 Day Notice, only a 1 Month Notice. Therefore, I have excluded that request by the tenant.

The tenant said they did not receive the landlord's evidence. The agent said their evidence was sent by registered mail and was returned to them, marked, "refused". The tenant confirmed refusing the mail as she did not know the sender. I find refusing mail does not impact the deemed service provisions of the Act. I therefore find that the tenant was sufficiently served the landlord's evidence and it will be included for consideration in this matter.

The landlord listed on the written tenancy agreement is no longer the landlord for this tenancy. As a result, I have changed the name of the landlord to reflect the name on the 1 Month Notice issued to the tenant, as the tenant listed an incomplete landlord name.

Issue(s) to be Decided

Has the landlord submitted sufficient evidence to support the Notice to end the tenancy?  
Should the Notice be cancelled or enforced?

Is the tenant entitled to the order requested as noted above and recovery of the cost of the filing fee?

Background and Evidence

The written tenancy agreement shows the tenancy began on May 1, 2014, and the evidence was the current monthly rent is \$950.

In accordance with the Rules, the landlord proceeded first to prove the causes listed on the Notice.

The Notice was dated October 31, 2022, for an effective move out date of November 30, 2022. The tenant confirmed receiving the Notice on October 31, 2022 when it was attached to their door.

The causes listed on the 1 Month Notice are:

1. Tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
2. Tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.
3. Tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk.
4. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

In the Details of Causes portion of the Notice, the landlord wrote the following:

Details of the Event(s):

Tenant has breached a material term of signed Tenancy Agreement, repeatedly interfering with the quiet enjoyment of others and put the Landlords property at significant risk. After tenant was cautioned in writing to cease disruptive/damaging behavior the ongoing issue has not been resolved leaving us no choice but to issue a one month notice for cause.

August 8 2022 -7:30 am Flood from Portable washer seeping into unit ☐ and flooding. Hot water tap pouring into bathtub. Ceiling and wall damage in Apt ☐ as well as carpets.

August 8 2022 11:00 am Had professional plumber ☐ Plumbing at tenants request. Tap fixed and pipe under bathroom sink. Tenant advised by plumber to remove Portable Washer as pipes won't support it and it is overflowing. Tenant also told by Manager ☐ to not use. Tenant was arguing and combative.

August 9 2022 Tenant issued breach notice to remove Portable Washer and to call immediately if there were any maintenance issues such as hot water tap/shower leaking.

October 24 2022 8:00 am called again from Apt ☐ that she had fallen on water on her bathroom floor due to flooding from Apt ☐ Pictures taken. Significant damage to ceiling, walls and carpets in Apt ☐ Floor lifting and damage to Apt ☐ Had maintenance wet vacuum both apartments, as well as rent de-humidifiers and had to cut out drywall. Disengaged Portable Washer but tenant was disputing and combative.

October 26 2022 Breach issued for non-compliance and breach of Material Terms Tenancy Agreement.

[Reproduced as written except for anonymizing personal information to protect privacy]

In summary and relevant part, the agent testified to the following: On August 8, 2022, the unit below the tenant's rental unit experienced a flood when water came pouring through their ceiling. Additionally, the tenant failed to notify them of any leak or water issues. A plumber was called to the premises to investigate the water leak, which was determined to be a shower valve cartridge, which was replaced.

According to the plumber, they noticed the tenant had a portable washing machine hooked to the bathroom tap, with clothing in it, and where water had overflowed to the floor. The tenant was issued a caution letter as the drainage system in a building that age was not designed for that type usage.

On October 24, 2022, the plumber was called to the property again for water issues. The plumber noticed the washing machine was still there with clothes in it. The plumber found no signs of a water leak and concluded that the washing machine had overflowed again.

The tenant is not allowed additional appliances in the rental unit, according to the written tenancy agreement.

Filed in evidence was the 1 Month Notice, written plumber's statement, a photo of the washing machine attached to the bathroom sink, and the two caution/warning reports to the tenant.

In summary and relevant part, the tenant testified to the following: The washing machine is now in the closet and not being used. The washing machine was not the cause of the leak, but was from a bad leak in the pipes, as the water came from the bottom of the tub. The washing machine has only been used maybe twice after she acquired the machine in September. The second flooding was due to putting water in the tub for a bath and taking a tumble into the water due to balance issues, which caused the water to splash out.

### Analysis

Where a tenant applies to dispute a Notice, the landlord has to prove, on a balance of probabilities, the grounds on which the Notice is based and should be upheld. If the landlord fails to prove the Notice is valid, it will be cancelled. The burden of proof is based on the balance of probabilities, meaning the events as described by one party are more likely than not.

A landlord does not have to provide sufficient evidence for all causes, only on one, to meet their burden of proof.

I find that Notice to be completed in accordance with the requirements of section 52 of the Act.

After considering relevant evidence and submissions, I find that the landlord has provided sufficient evidence to show that the tenant has put the landlord's property at significant risk. I base my decision on the following.

I find the evidence shows that that the tenant was given a written caution notice from the landlord on August 9, 2022, when the plumber noticed the machine was connected to the bathroom sink.

On October 24, 2022, another flood occurred in the unit below the rental unit, and the plumber, according to their written report, saw the washing machine with clothes still in the bathroom, concluding the washing machine caused the overflow.

I find it unreasonable that the tenant attached and used a washing machine where there are no built-in water hose connections. Using a water hose to the bathroom sink I find would not sufficiently allow for proper drainage of wastewater, which has caused floods, according to the plumber.

I do not accept the tenant's version of events that she has only used the washing machine twice since she claimed to have bought the machine in September.

I have given significant weight to the plumber's report, as it was supported by clear details, and a photo of the washing machine attached to the bathroom sink. The plumber first observed the machine in August 2022 and both times in inspecting the rental unit, August and October 2022, saw the machine in the bathroom with clothes in it, according to their report.

Taken in totality, I find the landlord has submitted sufficient evidence to prove at least one of the above noted causes on the Notice, as I find the tenant using an unauthorized appliance which caused at least one flood into the unit below has put the landlord's property at significant risk.

For this reason, I **dismiss** the tenant's application requesting cancellation of the Notice, without leave to reapply, as I find the 1 Month Notice dated October 31, 2022 valid, supported by the landlord's evidence, and therefore, enforceable. I therefore uphold the Notice and I **order** the tenancy ended on the effective date of that Notice, or November 30, 2022. This dismissal includes the request for recovery of the filing fee.

Under Section 55(1)(b) of the Act, if a tenant's application to cancel a Notice has been dismissed, I must grant the landlord an order of possession.

I therefore grant the landlord an order of possession of the rental unit effective and enforceable **two (2) days after service on the tenant**.

Should the tenant fail to vacate the rental unit pursuant to the terms of the order after being served, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenant is **cautioned** that costs of such enforcement, **including bailiff fees**, are recoverable from the tenant.

As to the tenant's secondary issue requesting an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, as the tenancy is ending, I find it unnecessary to consider this request. I find this issue relates to an ongoing tenancy.

### Conclusion

For the reasons stated above, the tenant's application seeking cancellation of the 1 Month Notice is dismissed, without leave to reapply.

The landlord has been issued an order of possession for the rental unit, effective two days after service on the tenant.

The tenant's request for an order against the landlord and recovery of the filing fee is dismissed, without leave to reapply.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: March 31, 2023

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Residential Tenancy Branch