



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNC, LRE, RPP, OLC, FFT

### Introduction

This hearing dealt with the Tenant's application under the Residential Tenancy Act (the "Act") for:

- cancellation of a One Month Notice to End Tenancy for Cause dated November 29, 2022 (the "One Month Notice") pursuant to section 47; and
- an order suspending or setting conditions on the Landlord's right to enter the rental unit pursuant to section 70(1);
- an order for the Landlord to return the Tenant's personal property seized or received by the Landlord contrary to the Act or the tenancy agreement pursuant to section 65(1)(e);
- an order that the Landlord comply with the Act, the regulations, or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72.

The Landlord attended this hearing and was given a full opportunity to be heard, to present affirmed testimony, and to make submissions.

The Tenant did not attend this hearing. I left the teleconference hearing connection open until 10:38 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 and I were the only ones who had called into the hearing.

I informed the Landlord that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Correction of Rental Unit Address

The Landlord confirmed the correct address for the rental unit. I have amended the address accordingly pursuant to section 64(3)(c) of the Act.

Preliminary Matter – Service of Dispute Resolution Documents

The Landlord acknowledged receipt of a partial notice of dispute resolution proceeding package (the “NDRP Package”) from the Tenant. The Landlord testified that she did not receive any evidence from the Tenant. I find the Landlord was sufficiently served with the NDRP Package pursuant to section 71(2) of the Act.

The Landlord testified that she sent her evidence to the Tenant via registered mail on February 9, 2023 (first of two tracking numbers referenced on the cover page of this decision). I find the Tenant was served with the Landlord’s evidence in accordance with section 88(c) of the Act. I find that pursuant to section 90(a) of the Act, the Tenant is deemed to have received the evidence on the fifth day after mailing, or February 14, 2023.

Preliminary Matter – Tenant’s Non-attendance

Rule 7.3 of the Rules of Procedure provides as follows:

**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 reapply.

As the Tenant did not attend this hearing for his own application while the Landlord duly attended, and in the absence of any submissions or substantive evidence, I dismiss all of the Tenant’s claims on this application, except for the claim to dispute the One Month Notice, without leave to re-apply.

The Landlord confirmed she is seeking an Order of Possession under the One Month Notice. Therefore, I directed that the hearing be conducted in the absence of the Tenant to decide the issues relating to the One Month Notice.

### 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

This tenancy commenced on August 8, 2022 and is month-to-month. Rent is \$1,750.00 due on the first day of the month. The Tenant did not pay a security deposit. There is no written tenancy agreement between the parties.

Copies of the One Month Notice have been submitted into evidence by the Landlord. It has an effective date of December 31, 2022. The causes for ending the tenancy are:

- Tenant is repeatedly late paying rent
- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely jeopardize a lawful right or interest of another occupant or the landlord
- Security deposit or pet damage deposit was not paid within 30 days as required by the tenancy agreement

The One Month Notice includes an attachment which provides further details of the causes claimed.

The Landlord testified that she sent a copy of the One Month Notice to the Tenant via registered mail on November 25, 2022 (second tracking number on cover page), and again via email on November 29, 2022. The Tenant's application indicates that the Tenant received a copy of the One Month Notice via email on November 29, 2022.

The Landlord testified that the Tenant was late with rent for August, October, and November 2022. The Landlord explained that since the Tenant moved in in the middle of the month, the parties had agreed for half month's rent to be due on August 16, 2022, but the Tenant was late by two days. The Landlord stated that October rent was paid late on October 4, 2022. The Landlord stated that November rent was paid in installments and paid by November 14, 2022. The Landlord referred to text message correspondence and e-transfer records submitted into evidence.

The Landlord explained that the Tenant asked for permission to sublet because he was temporarily laid off from work in late October 2022.

The Landlord testified that the Tenant made serious threats against her when she refused to give him permission to sublet the rental unit to a couple with a dog, because the building did not allow dogs. The Landlord stated that she received many abusive text messages from the Tenant which include profanity. The Landlord stated that the threats were serious and that she had contacted police.

The Landlord testified that on November 24, 2022, she clearly informed the Tenant via email that he did not have permission sublet, but the Tenant did it anyway.

The Landlord stated that she went for an inspection of the rental unit on November 28, 2022 with her brother, and found a subletter in the apartment. The Landlord's evidence indicates that the Tenant was out of town at the time, and according to a text message from the Tenant, the person in the rental unit was his "tenant".

The Landlord stated that she had offered to give the Tenant December 2022 rent-free if he did not sublet and the Tenant was to move out by the end of December 2022. The Landlord testified that the Tenant said he would not pay rent and will not leave or pay any rent until the matter was resolved in "court". The Landlord testified that the Tenant did not pay rent at all from December 2022 to February 2023.

The Landlord referred to high utility bills and correspondence records submitted into evidence to suggest that the Tenant may have been consuming illicit drugs or using the rental unit for a grow-up.

### 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.

I have reviewed the One Month Notice and find that it complies with the requirements of section 52 in form and content.

I find the Tenant's application acknowledges receipt of the One Month Notice on November 29, 2022 via email. I find the Tenant was sufficiently served with the One Month Notice on November 29, 2022 pursuant to section 71(2)(b) of the Act.

Section 47(4) of the Act permits a tenant to dispute a one month notice to end tenancy for cause within 10 days after receiving such notice. Therefore, the Tenant had until December 9, 2022 to dispute the One Month Notice. Records indicate the Tenant submitted this application on December 3, 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 states that the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Sections 47(1)(a), (b), (d)(i), and (e)(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:

- (a) the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;
- (b) the tenant is repeatedly late paying rent;

[...]

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

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

[...]

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

[...]

(iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

In this case, I accept the Landlord's undisputed evidence and testimony that the Tenant was late paying rent for the months of August, October, and November 2022. Furthermore, I accept the Landlord's undisputed testimony that the Tenant has not paid any rent since December 2022.

According to Residential Tenancy Policy Guideline 38. Repeated Late Payment of Rent, three late payments are the minimum number sufficient to justify a notice to end tenancy. Based on the evidence presented, I am satisfied that the Tenant has been late with paying rent at least three times prior to the issuance of the One Month Notice, and has since continued to be late with the rent.

I conclude that the Landlord has established cause for issuing the One Month Notice to end the tenancy under section 47(1)(b) of the Act, for repeatedly late payment of rent.

I find it is not necessary to consider whether the Landlord has also established cause under sections 47(1)(a), (d)(i) and (e)(iii) of the Act.

The Tenant's claim to dispute 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 claim to dispute the One Month Notice, I find the Landlord is entitled to an Order of Possession pursuant to section 55(1) of the Act.

The effective date of the One Month Notice has already passed. I grant an Order of Possession to the Landlord effective two (2) days after service of the Order upon the Tenant.

Conclusion

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

Pursuant to section 55(1) of the Act, I grant an Order of Possession to the Landlord effective two (2) days after service upon the Tenant. 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: March 01, 2023

---

Residential Tenancy Branch