



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## Dispute Codes:

CNC, FFT

## Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to cancel a One Month Notice to End Tenancy for Cause and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on October 22, 2022, the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch in October and November of 2022 was sent to the Landlord, via registered mail. The Agent for the Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On January 23, 2023 and January 24, 2023, the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was posted on the Tenant's door on January 24, 2023. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings, with the following proviso.

The Landlord submitted two letters in which the authors refer to an odor in the rental unit, both of which identify to author of the letter. The Agent for the Landlord stated that the names of letters served to the Tenant did not include the names of the authors.

Rule 3.7 of the Residential Tenancy Branch Rules of Procedure requires parties to serve the other party with evidence that is identical to the evidence submitted to the Residential Tenancy Branch. I find that the aforementioned letters served to the Tenant were not identical to the letters submitted to the Residential Tenancy Branch. Although I will be considering these letters, I will be considering them as they have been seen by

the Tenant, which is to say I will presume the names on the letters I have are also redacted.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

### Preliminary Matter

The Agent for the Landlord stated that the Landlord submitted 2 photographs of the cat litter box, which shows moisture in the litter box and on the wall beside it.

The Tenant stated that she received these photographs as evidence. She stated that the moisture seen in the photographs is condensation.

The parties were advised that I was unable to locate these 2 photographs in the documents submitted by the Landlord. As the photographs were served to the Tenant and the photographs were not before me due to a technical/human error, I find it reasonable to allow the Landlord to resubmit this evidence. This evidence was resubmitted on March 02, 2023 and it was considered during this adjudication.

### Issue(s) to be Decided

Should the One Month Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?

### Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began on April 01, 2022;
- rent is due by the first day of each month;
- a One Month Notice to End Tenancy for Cause was posted on the Tenant's door;

- the One Month Notice to End Tenancy for Cause declared that the rental unit must be vacated by November 30, 2022; and
- the One Month Notice to End Tenancy for Cause declares that the tenancy is ending because 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 tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk, and the tenant has breached a material term of the tenancy that was not corrected within a reasonable time.

The Tenant stated that she located the One Month Notice to End Tenancy for Cause on her door on October 18, 2022.

The Agent for the Landlord stated that on June 04, 2022 the Landlord was inspecting the residential complex and he noticed a strong odor emanating from the rental unit. The parties agree that on June 04, 2022, the Landlord gave the Tenant written notice of this issue and that the Tenant was asked to correct it.

The Agent for the Landlord stated that on August 02, 2022, the Landlord received a written complaint from an occupant of the residential complex, in which the occupant reported a strong odor emanating from the rental unit. The Agent for the Landlord stated that when she stood in the hallway outside of the rental unit on August 02, 2022, she could detect a strong odor. The parties agree that on August 02, 2022, the Landlord gave the Tenant written notice of this issue and that the Tenant was asked to correct it.

The Agent for the Landlord stated that in October of 2022 the Landlord received a written complaint from another occupant of the residential complex, in which the other occupant reported a strong odor emanating from the rental unit. The Agent for the Landlord stated that when she stood in the hallway outside of the rental unit on October 16, 2022, she could detect a strong odor.

The Landlord and the Tenant agree that the unit was inspected on December 14, 2022. The Agent for the Landlord stated that at the time of the inspection there was a strong odor of bleach in the unit and no pet odor could be detected. She stated that she could detect a strong pet odor when standing outside of the unit on December 14, 2022.

The Tenant stated that she keeps her unit very clean, she cleans the litter box twice a day, she uses a door draft to prevent odors from filtering out of her unit into the hallway, and she has placed air fresheners outside of her door.

The Agent for the Landlord and the Tenant agree that the Tenant has a full-time job and that she is a student, so she is away from the unit for extended periods. The Tenant stated that she has a friend visit the cats when she is away for long periods.

### Analysis

On the basis of the undisputed evidence, I find that the Landlord and the Tenant have a tenancy agreement which requires rent to be paid by the first day of each month.

Section 47(1) of the *Residential Tenancy Act (Act)* permits a landlord to end a tenancy by giving notice to end the tenancy if:

- 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;
- (c) there are an unreasonable number of occupants in a rental unit;
- (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,
  - (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;
- (e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
  - (i) has caused or is likely to cause damage to the landlord's property,
  - (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
  - (iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- (f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;
- (g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) [*obligations to repair and maintain*], within a reasonable time;
- (h) the tenant
  - (i) has failed to comply with a material term, and
  - (ii) has not corrected the situation within a reasonable time after the landlord gives

written notice to do so;

(i) the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 *[assignment and subletting]*;

(j) the tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property;

(k) the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;

(l) the tenant has not complied with an order of the director within 30 days of the later of the following dates:

(i) the date the tenant receives the order;

(ii) the date specified in the order for the tenant to comply with the order.

On the basis of the undisputed evidence, I find that on October 18, 2022, the Tenant received the One Month Notice to End Tenancy for Cause that was posted on her door, which informed the Tenants of the Landlord's intent to end the tenancy pursuant to sections 47(1)(d)(i), 47(1)(d)(iii), and 47(1)(h) of the *Act*. The Landlord only needs to establish that they one ground for ending the tenancy.

On the basis of the testimony of the Agent for the Landlord and in the absence of evidence to the contrary, I find that on at least three occasions a strong odor has emanated from the rental unit, which is disturbing other occupants. While I accept that the Tenant has made reasonable efforts to address the issue, it is clear that the odor persists and that the odor is offensive to others. I therefore find that the Landlord has grounds to end this tenancy pursuant to section 47(1)(d)(ii) of the *Act*, and I dismiss the Tenants' application to set aside the One Month Notice to End Tenancy for Cause.

In adjudicating this matter, I have placed little weight on the photographs of the cat litter box which were submitted in evidence by the Landlord. I find that the moisture demonstrated in those photographs is not likely to be the cause of the pet odor that can be detected outside of the rental unit, as there is not a significant amount of moisture in the photos.

Section 55(1) of the *Act* stipulates that 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 the landlord's notice to end tenancy complies with section 52 of the *Act*, and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As I am satisfied that the One Month Notice to End Tenancy for Cause complies with section 52 of the *Act* and I have dismissed the application to set aside the One Month Notice to End Tenancy for Cause. I must grant the Landlord an Order of Possession. I therefore grant the Landlord an Order of Possession, pursuant to section 55(1) of the *Act*.

I find that the Tenant has failed to establish the merit of this Application for Dispute Resolution and I dismiss the application to recover the for filing the Application.

### Conclusion

I grant the Landlord an Order of Possession that is effective on **at 1:00 p.m. on March 31, 2023**. This Order may be served on the Tenant, filed with 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 *Act*.

Dated: March 02, 2023

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Residential Tenancy Branch