



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding HAROB HOLDING LTD and  
[tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **CNC, RR, DRI-ARI-C, LRE**

### **Introduction**

This hearing dealt with the Tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. Cancellation of the Landlords' One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to Sections 47 and 62 of the Act;
2. An Order to dispute a rent increase that is above the amount allowed by law pursuant to Section 43 of the Act;
3. An Order to reduce rent for repairs, services or facilities agreed upon but not provided pursuant to Section 65 of the Act; and,
4. An Order to suspend or set conditions on the Landlords' right to enter the rental unit pursuant to Section 70 of the Act.

The hearing was conducted via teleconference. The Landlords' agent, and the Tenant attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

Both parties acknowledged receipt of:

- the Landlords' One Month Notice personally served on December 6, 2022, the Tenant confirmed receipt, served on December 6, 2022;

- the Tenants' Notice of Dispute Resolution Proceeding package served by registered mail on January 4, 2023, Canada Post Tracking Number on cover sheet of decision, the Landlords' agent confirmed receipt on January 9, 2023, deemed served on January 9, 2023; and,
- the Landlords' evidence package personally served on March 30, 2023, the Tenant confirmed that he received some of the evidence, sufficiently served on March 30, 2023.

Pursuant to Sections 71(2)(b), 88, 89 and 90 of the Act, I find that both parties were duly served with all the documents related to the hearing in accordance with the Act.

### Preliminary Matter

#### *Unrelated Claims*

Prior to the parties' testifying, I advised them that RTB Rules of Procedure 2.3 authorizes me to dismiss unrelated claims contained in a single application. The Tenants had indicated different matters of dispute on their application, the most urgent of which is the claim to cancel the One Month Notice. I advised that not all the claims on the application are sufficiently related to be determined during this proceeding; therefore, I will consider only the Tenants' request to cancel the One Month Notice at this proceeding. The Tenants' other claims are dismissed.

### Issues to be Decided

1. Are the Tenants entitled to cancellation of the Landlords' One Month Notice?
2. If the Tenants are not successful, are the Landlords entitled to an Order of Possession?

### Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on September 1, 2021. The fixed term ended on August 31, 2022, then the tenancy continued on a month-to-month basis. Monthly rent is \$1,370.00 payable on the first day of each month.

A security deposit of \$675.00 was collected at the start of the tenancy and is still held by the Landlords.

The One Month Notice stated the reason the Landlords were ending the tenancy was because the Tenant has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable time after the landlord gives written notice to do so. The effective date of the One Month Notice was January 31, 2023.

The Landlords provided further details of the causes to end this tenancy as:

*Residents have failed to comply with all the warning letters to reduce excessive combustible materials in the rental unit.*

The Tenant confirmed receipt of the Landlords' May 4, 2022 warning letter. The Tenant stated the building was very busy during the renovations. He said they were instructed to leave the rental unit the way it was to leave a path for the construction workers involved with the renovations.

The Tenant confirmed receipt of the Landlords' June 20, 2022 final warning letter. The Tenant repeated that the renovations made it very hard for them to organize themselves during the renovations.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Section 47 of the Act is the relevant part of the legislation in this matter. It states:

### ***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:*

...

- (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;*
- ...*
- (3) A notice under this section must comply with section 52 [form and content of notice to end tenancy].*
- (4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.*
- (5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant*
  - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and*
  - (b) must vacate the rental unit by that date.*

The Tenants were personally served with the One Month Notice on December 6, 2022. I find that the One Month Notice complied with the form and content requirements of Section 52 of the Act. The Tenants applied for dispute resolution on December 19, 2022 which was beyond the 10 days after receiving the One Month Notice.

The Tenants confirmed receipt of the One Month Notice on December 6, 2022, and ten days after receipt of the notice was December 16, 2022. The Tenants filed for dispute resolution on December 19, 2022. I find that the Tenants have failed to file an application for dispute resolution within the 10 days after receiving the One Month Notice under Section 47(4) of the Act. So, I find that the Tenants are conclusively presumed under Section 47(5)(a) of the Act to have accepted that the tenancy ended on the effective date of the notice, in this case, January 31, 2023. I dismiss the Tenants' application to cancel the One Month Notice.

As the Tenants were unsuccessful in their application, I must consider if the Landlords are entitled to an Order of Possession. Section 55 of the Act reads as follows:

***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.*

Based on my finding that this tenancy is conclusively presumed to have ended, I uphold the Landlords' One Month Notice. I grant an Order of Possession to the Landlords pursuant to Section 55(1) of the Act which will be effective on May 31, 2023 at 1 p.m. after service on the Tenants.

Conclusion

The Tenants' application is dismissed without leave to re-apply.

The Landlords' One Month Notice is upheld, and I grant an Order of Possession to the Landlords effective on May 31, 2023 at 1 p.m. The Landlords must serve this Order on the Tenants as soon as possible. Should the Tenants fail to comply with this Order, this Order 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 Act.

Dated: May 24, 2023

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Residential Tenancy Branch