



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## DECISION

### Dispute Codes

Parties	File No.	Codes:
(Tenant) C.G.	910098793	CNC-MT, RR, RP, PSF, LRE, OLC
(Landlord) HH Ltd.	910103018	OPC, FFL

### Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties.

The Tenant applied:

- To cancel a One Month Notice to End Tenancy for Cause dated January 6, 2023 ("One Month Notice");
- For more time to apply to cancel the One Month Notice;
- For an Order to reduce the rent for repairs, services or facilities agreed upon, but not provided;
- For an Order for repairs to the unit or property;
- For an Order to provide services or facilities required by the tenancy agreement or law;
- To suspend or restrict the Landlord's right to enter; and
- For an Order for the Landlord to Comply with the Act or tenancy agreement.

The Landlord applied:

- For an Order of Possession for Cause, based on the One Month Notice; and
- For recovery of their \$100.00 application filing fee.

Two agents for the Landlord, M.H. and K.V. (the “Agents”), appeared at the teleconference hearing. No one attended on behalf of the Tenant. The teleconference phone line remained open for over ten minutes and was monitored throughout this time. The only persons to call into the hearing were the Agents, who indicated that they were ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only persons on the call, besides me, were the Agents.

The Tenant was provided with a copy of his Notice of a Dispute Resolution Hearing on January 31, 2023; however, the Tenant did not attend the teleconference hearing scheduled for May 16, 2023, at 11:00 a.m. (Pacific Time). The phone line remained open for over ten minutes and was monitored throughout this time.

Rule 7.1 of the Residential Tenancy Branch Rules of Procedure (“Rules”) states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. The Respondent Landlord’s Agents and I attended the hearing on time and were ready to proceed, and there was no evidence before me that the Parties had agreed to reschedule or adjourn the matter; accordingly, I commenced the hearing at 11:00 a.m. on May 16, 2023, as scheduled.

Rule 7.3 states that 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. The teleconference line remained open for over ten minutes, however, neither the Applicant nor an agent acting on his behalf attended to provide any evidence or testimony for my consideration. As a result, and pursuant to Rule 7.3, I **dismiss the Tenant’s Application wholly without leave to reapply**. Further, the Agents said that they were surprised when I spoke of the Tenant’s Application, as they said he failed to serve them with a Notice of Hearing and any evidence. This gives me another reason to dismiss the Tenant’s application without leave to reapply, pursuant to section 62 of the Act.

In contrast, the Agents said they served the Tenant with their Notice of Hearing and evidence by registered mail on March 8, 2023. They provided a Canada Post tracking number as evidence of this service. I find that the Tenant was served with the Landlord’s Notice of Hearing and evidence pursuant to the Act.

When a tenant applies to cancel an eviction notice, section 55 of the Act requires me to consider whether the landlord is entitled to an order of possession. I must grant the landlord an Order of Possession if – first - I dismiss the tenant’s application, and second, if the eviction notice is compliant with the Act, as to form and content.

The onus to prove their case is usually on the person who applies for dispute resolution. However, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel an eviction notice. As such, the burden of proof is on the Landlord for this proceeding.

### Preliminary and Procedural Matters

The Parties provided their email addresses in their applications, and the Agents confirmed these in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

### Issue(s) to be Decided

- Should the One Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?
- Is the Landlord entitled to recovery of their \$100.00 Application filing fee?

### Background and Evidence

The Agents confirmed that the tenancy began on November 1, 2017, with a (current) monthly rent of \$507.00, due on the first day of each month. The Agents said that the Tenant paid the Landlord a security deposit of \$250.00 and no pet damage deposit. They confirmed that the Landlord still holds the security deposit in full.

In the hearing, the Agents confirmed the details of the One Month Notice, including that it was signed and dated January 6, 2023, and that it has the rental unit address. It was served by attaching a copy to the rental unit door on January 6, 2023, with an effective vacancy date of February 28, 2023. They confirmed that the One Month Notice was served on the grounds that the Tenant has seriously jeopardized the health or safety or lawful right of another occupant or the Landlord.

The Agents directed my attention to videos showing the Tenant trying to break into a room that they said contains tools. They also noted a video they submitted showing the Tenant angrily confronting the Agents and approaching one in an aggressive manner. The Agents said that the break-in attempt by the Tenant caught on video is the reason for the One Month Notice.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Based on the testimony of the Agents, as well as the video evidence of the Tenant's behaviour, I find the Landlord has established sufficient cause, pursuant to Section 47 of the Act, to end the tenancy. I find that the Tenant seriously jeopardized the health or safety or lawful right of another occupant or the Landlord.

As a result, the Tenant's Application to cancel the One Month Notice is dismissed without leave to reapply. Further, as the tenancy is now over, I dismiss the Tenant's Application wholly without leave to reapply, pursuant to section 62 of the Act.

I also find that the One Month Notice issued by the Landlord complies with section 52 of the Act. Given the above, and pursuant to section 55 of the Act, the Landlord is entitled to an Order of Possession. Therefore, I **grant the Landlord an Order of Possession effective two days after deemed service** on the Tenant, pursuant to section 55 of the Act.

Given their success, I also **award the Landlord** with recovery of their **\$100.00** Application filing fee, pursuant to section 72 of the Act. The Landlord is authorized to deduct \$100.00 from the Tenant's \$250.00 security deposit in complete satisfaction of this monetary award.

### Conclusion

The Tenant's application is unsuccessful, as he failed to attend the hearing, and further, because the Landlord provided sufficient evidence to meet their burden of proof in this matter on a balance of probabilities. The Tenant's Application is dismissed wholly without leave to reapply.

The Landlord's application is successful, as noted above. Further, as I have found that the Tenant seriously jeopardized the health or safety or lawful right of another occupant or the Landlord, and pursuant to section 55 of the Act, I **grant an Order of Possession** to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and 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.

**The Landlord is also awarded** recovery of the **\$100.00** filing fee and **is authorized to deduct this amount from the Tenant's security deposit.**

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: May 16, 2023

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Residential Tenancy Branch