



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding HAISLA TRUST SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC, FFL, CNR-MT, CNC-MT, PSF, OLC

### Introduction and Preliminary Matters

This hearing dealt with cross-applications filed by the parties. On January 26, 2023, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession based a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On January 30, 2023, the Tenants applied for a Dispute Resolution proceeding seeking to cancel the Notice pursuant to Section 47 of the *Act*, seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities pursuant to Section 46 of the *Act*, seeking more time to cancel the notices to end tenancy pursuant to Section 66 of the *Act*, seeking the provision of services or facilities pursuant to Section 62 of the *Act*, and seeking an Order to comply pursuant to Section 62 of the *Act*.

K.R. attended the hearing as an agent for the Landlord. Both Tenants attended the hearing as well, with B.M. attending as an advocate for the Tenants. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

As per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims.

As such, this hearing primarily addressed the Landlord's One Month Notice to End Tenancy for Cause solely, as a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was never served. The other claims were dismissed with leave to reapply. The Tenants are at liberty to apply for any other claims under a new and separate Application.

K.R. was asked multiple times if the Landlord's Notice of Hearing and evidence packages were served to the Tenants within three days of being provided to the Landlord, on February 6, 2023. She was clearly uncertain about this service and would continually refer to the proof of service form for the Notice which was served on December 1, 2022. After being given multiple opportunities to provide an answer for if these packages were served to the Tenants, she eventually stated that they were served to the Tenants by hand on February 7, 2023. She claimed that service of these packages was witnessed by the same person that observed service of the Notice; however, she did not submit a proof of service form to corroborate this.

Tenant D.M. advised that these packages were never served to them.

When reviewing the testimony of the parties, I find it important to note that the burden is on the Landlord to substantiate sufficient service in this case. Given the uncertainty and confusion regarding service on the part of K.R., combined with D.M.'s solemnly affirmed testimony that these packages were never served, I do not find K.R.'s wavering and unsubstantiated testimony to be compelling or persuasive. As such, I am not satisfied, on a balance of probabilities, that these packages were duly served to the Tenants within three days of February 6, 2023, pursuant to Rule 3.1 of the Rules of Procedure (the "Rules"). As such, the Landlord's Application is dismissed in its entirety.

B.M. advised that the Tenants' Notice of Hearing package was served to the Landlord by registered mail on February 13, 2023, and K.R. confirmed that this was received. Based on this undisputed testimony, I am satisfied that the Landlord was duly served the Tenants' Notice of Hearing package.

She then advised that the Tenants' evidence was served to the Landlord by registered mail on May 4, 2023, and that their digital evidence was never served. K.R. confirmed that this evidence was received the next week, and that it was served too late for the Landlord to adequately respond. Given that the Tenants made this Application in January 2023, they had sufficient time to serve their evidence. As it was clearly done at the last minute, and as it was not served in accordance with the timeframe requirements

of Rule 3.14 of the Rules, I have excluded this evidence and will not consider it when rendering this Decision.

K.R. confirmed that the Landlord did not submit any evidence for consideration on the Tenants' file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

#### Issue(s) to be Decided

- Are the Tenants entitled to have the Notice cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on September 27, 2021, that the rent was currently established at an amount of \$500.00 per month, and that it was due on the first day of each month. A security deposit of \$250.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

K.R. advised that the Notice was served to the Tenants by being attached to the door on December 1, 2022, and she referenced a signed proof of service form to corroborate

this. The reasons the Landlord served the Notice were 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 and seriously jeopardized the health or safety or lawful right of another occupant or the landlord.” The effective end date of the tenancy was noted as December 31, 2022, on the Notice; however, this date is incorrect and will have automatically self-corrected to the correct date of January 31, 2023, pursuant to Section 53 of the *Act*.

D.M. confirmed that they received the Notice on December 6, 2022. When the Tenants were asked why they did not dispute the Notice in time, B.M. stated that the Tenants first went to an advocate, who refused to help them. She testified that the Tenants then sought assistance from another advocate who did not understand the process and mailed an Application to dispute the Notice to the Residential Tenancy Branch mistakenly. She stated that once the Tenants discovered that this was wrong, they applied to dispute the Notice correctly, with the help of B.M.

Tenant A.C. advised that the first advocate they went to refused to assist them and told them to move out instead. He stated that they then immediately went to another advocate.

D.M. advised that they were first refused service on December 5, 2022, which contradicted her testimony that they received the Notice on December 6, 2022. Regardless, she testified that they then contacted a different advocate, which was B.M., and that they had to wait awhile for an appointment.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 52 of the *Act* requires that any notice to end tenancy issued by a Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form. I have reviewed this Notice and I find that it meets all of the requirements of Section 52. As such, I am satisfied that it is a valid Notice.

As the One Month Notice to End Tenancy for Cause was attached to the Tenants' door, the Tenants were deemed to have received it on December 4, 2022. According to Section 47(4) of the *Act*, the Tenants had 10 days to dispute this Notice, and Section 47(5) of the *Act* states that *"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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date."*

As the tenth day fell on December 14, 2022, the Tenants must have made this Application by that day at the latest. However, the undisputed evidence is that the Tenants made their Application on January 30, 2023. As the Tenants were late in making this Application, they requested more time to do so. Pursuant to Section 66 of the *Act*, I have the authority to extend the time frame to dispute the One Month Notice to End Tenancy for Cause "only in exceptional circumstances." When the Tenants were questioned if there were any exceptional circumstances that prevented them from disputing the One Month Notice to End Tenancy for Cause within the required time frame, they indicated that it was due to problems that they had with different advocates that they sought out for assistance.

Based on Section 66 of the *Act*, I have the authority to determine whether to consider if the Tenants' testimony and reasons would constitute exceptional circumstances. However, I do not find any of the Tenants' reasons for not disputing the One Month Notice to End Tenancy for Cause to satisfactorily be considered exceptional. Firstly, there was no documentary evidence submitted that I could consider that corroborated the Tenants' testimony. Secondly, I find it important to note that at the top of the first page of the Notice, it clearly states the following:

#### **HOW TO DISPUTE THIS NOTICE**

You have the right to dispute this Notice **within 10 days** of receiving it, by filing an Application for Dispute Resolution with the Residential Tenancy Branch online, in person at any Service BC Office or by going to the Residential Tenancy Branch Office at #400 - 5021 Kingsway in Burnaby. If you do not apply within the required time limit, you are presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date of this Notice.

I acknowledge that the Tenants allegedly made attempts to have someone assist them; however, the above directions are clearly laid out. While it is possible that an advocate for them made a mistake, it cannot be more plainly described how to dispute the Notice. Moreover, if there was any confusion, the Tenants or their advocate could have

contacted the Residential Tenancy Branch to inquire about how to correctly dispute the Notice. As such, I do not accept that this would be a valid reason to extend the time to dispute the Notice. Moreover, given how late that this Notice was eventually disputed, essentially by the corrected effective date of the Notice, I do not accept that this would be a reasonable timeframe to allow for an extension of time either.

Ultimately, I am satisfied that the Tenants were conclusively presumed to have accepted the One Month Notice to End Tenancy for Cause, and I dismiss the Tenants' Application pursuant to Section 55(1) of the *Act*. As such, I find that the Landlord is entitled to an Order of Possession that takes effect **two days after service of this Order** on the Tenants.

As the Landlord was not successful in their Application, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for his Application.

### Conclusion

I dismiss the Tenants' Application without leave to reapply, and I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenants. This Order must be served on the Tenants by the Landlord. 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 *Residential Tenancy Act*.

Dated: May 30, 2023

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Residential Tenancy Branch