



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## DECISION

Dispute Codes      **TT: CNC**  
                             **LL: OPC FFL**

### Introduction

This hearing dealt with two applications for dispute resolution pursuant to the *Residential Tenancy Act* (the “Act”). The Tenant made one application for dispute resolution (“Tenant’s Application”) for:

- cancellation a One Month Notice for Cause dated December 27, 2022 (“1 Month Notice”) pursuant to section 47.

The Landlords made one application for dispute resolution (“Landlords’ Application”) for:

- an Order of Possession for cause pursuant to section 47; and
- authorization to recover the filing fee for the Landlords’ Application from the Tenant pursuant to section 72.

One of the two Landlords (“GJ”), the Landlords’ agent (“NK”) and the Tenant attended the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure* (“RoP”). The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The Tenant stated she served the Notice of Dispute Resolution Proceeding (“Tenant’s NDRP”) for the Tenant’s Application on each of the Landlords by registered mail but she could not recall the date the package was posted. The Tenant provided the Canada Post tracking stubs for service to corroborate her testimony. NK acknowledged the Landlords received the NDRP. I find the Tenant’s NDRP was served on each of the Landlords in accordance with the provisions of section 89 of the Act.

NK stated the Landlord served the Notice of Dispute Resolution Proceeding (“Landlords’ NDRP”) for the Landlords’ Application on the Tenant by registered mail on March 9, 2023. NK provided the Canada Post tracking number for service to corroborate her testimony. I find the Landlords’ NDRP was served on the Tenant in accordance with the provisions of section 89 of the Act.

#### Preliminary Matter – Service of Tenant’s Evidence on Landlords

NK stated that, although the Landlords received the registered mail packages with the Tenant’s NDRP, there was no evidence in the package. I find, on a balance of probabilities, that the Tenant has not proven that her evidence was served on the Landlords. Rule 3.14 of the RoP states:

#### **3.14 Evidence not submitted at the time of Application for Dispute Resolution**

Except for evidence related to an expedited hearing (see Rule 10) and an additional rent increase for capital expenditures application (see Rule 11), *documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.*

In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the arbitrator will apply Rule 3.17.

[emphasis added in italics]

The Tenant has not complied with the requirements of Rule 3.14 of the RoP. As I require a copy of the 1 Month Notice, and as the Landlord has a copy of it, I will accept the copy of the 1 Month Notice submitted to the Residential Tenancy Branch (“RTB”) by the Tenant. I will not accept any of the other of the Tenant’s evidence for this proceeding.

#### Preliminary Matter – Service of Landlords’ Evidence on Tenants

NK stated that, although she received the registered mail package with the Landlords’ NDRP, there was no evidence in the package. I find, on a balance of probabilities, that the Landlords have not proven that their evidence was served on the Tenant. The

Landlords have not completed with the requirements of Rule 3.14 of the RoP. As such, the Landlords' evidence is not admissible for this proceeding.

### Issues to be Decided

- Is the Tenant entitled to cancellation of the 1 Month Notice?
- If the Tenant is not entitled to cancellation of the 1 Month Notice, are the Landlords entitled to an Order of Possession?
- If the Tenant is not entitled to cancellation of the 1 Month Notice, are the Landlords entitled to recover the filing fee for the Landlords' Application?

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Tenants' and Landlords' Applications and my findings are set out below.

The parties agreed there was no signed tenancy agreement. The Landlord stated the tenancy was arranged through the Ministry of Social Development and Poverty Reduction pursuant to a shelter arrangement. The parties agreed the tenancy commenced on December 1, 2021 with rent of \$1,900.00 of which the Tenant is required to pay \$850.00. The Tenant was to pay a security deposit of \$425.00. The Landlord acknowledged the Tenant paid the deposit and that she is holding it in trust for the Tenant.

The Tenant submitted into evidence a copy of the 1 Month Notice. It states the causes for ending the tenancy are:

- Tenant has allowed an unreasonable number of occupants in the unit/site/property
- Tenant or a person permitted on the property by the tenant has
  - significantly interfered with or unreasonably disturbed another occupant or the landlord
  - seriously jeopardized the health or safety or lawful right of another occupant or the landlord
  - put the landlord's property at significant risk

- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park
- Tenant has not done required repairs of damage to the unit/site/property/park
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

The details of the causes for ending the tenancy provided in the 1 Month Notice are:

Tenants have allowed unauthorized and unreasonable number of occupants without consent of the landlord.

Unsanitary conditions in rental unit. Tenants do not keep reasonable standards of health and cleanliness and have left rental unit in unhygienic and filthy condition. Repeated warnings given but to no avail.

Mold has grown inside the rental unit and has created unhealthy and hazardous conditions. Excessive wear and tear and damage to the rental unit.

Tenants play drums and cause excessive noise with late parties and disturb other tenants and neighbours.

GK stated the 1 Month Notice was served on the Tenant in-person on December 27, 2022. The Tenant acknowledged receipt of the 1 Month Notice. As such, I find the 1 Month Notice was served on the Tenant in accordance with the provisions of sections 88 of the Act.

GK stated the Tenant has put the Landlords' property at significant risk. GK stated there is a lot of garbage in the rental unit and the rental unit is in a filthy condition. GK stated the condition in which the Tenant keeps the rental unit has caused mold to grow on walls or floors. The Tenant denied GK's testimony. As the Landlords' evidence was not accepted into evidence, there were no photos or other evidence to corroborate GK's testimony. GK did not call any witnesses to corroborate her testimony. GK stated the Landlords sent emails to the Tenant regarding the condition of the rental unit. The Tenant stated she did not give the Landlords consent to send documents to her by email. As emails are not a recognized method of service under section 88 of the Act unless the recipient has consented to such service, I find the Landlord has not proven, on a balance of probabilities, that the Tenant was served with these communications.

GK stated the Tenant has significantly interfered with or unreasonably disturbed the Landlords. The Tenant denied she has caused unreasonably disturbance to the Landlords. As the Landlords' evidence was not accepted into evidence, there was no evidence the Landlords gave the Tenant a written warning to the Tenant that she was unreasonably disturbing the Landlord.

GK stated the Tenant has caused extraordinary damage to the rental unit. As the Landlords' evidence was not accepted for this hearing, there were no photos or other evidence to corroborate GK's testimony. GK did not call any witnesses to corroborate her testimony that the Tenant has caused extraordinary damage to the rental unit. The Tenant denied she has caused extraordinary damage to the rental unit.

GK stated the rental unit has two bedrooms. GK stated there are three people living in the rental unit. GK argued that there are an unreasonable number of occupants in the unit. The Tenant admitted there are three occupants in the rental unit but did not consider this to be an unreasonable number of occupants.

GK stated the Tenant has not performed repairs to the rental unit. GK admitted the Landlords have not given the Tenant a written request that the Tenant perform repairs to the rental unit.

GK stated the Tenant has breached a material term of the tenancy agreement. GK admitted the Landlords did not serve a written notice on the Tenant outlining the nature of the material breach and requesting the Tenant correct it within a reasonable period of time.

### 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. In this case, the onus is the Landlord to establish on a balance of probabilities that it is entitled to an order for an early end of the tenancy.

Subsections 47(1)(d)(i), 47(1)(d)(i) and 47(1)(h) of the Act state:

- 47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:
- [...]
- (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
- [...]
- (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;
- [...]
- (2) A notice under this section must end the tenancy effective on a date that is
- (a) not earlier than one month after the date the notice is received, and
  - (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

- (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 1 Month Notice was served on the Tenant in-person December 27, 2022. Pursuant to section 47(4) of the Act, the Tenant had until December 3, 2023, being the next business day after expiry of the 10-day dispute period, within which to make the Tenant's Application. The records of the RTB indicate the Tenant made the Tenant's Application on December 27, 2022. As such, I find the Tenant made the Tenant's Application within the 10-day dispute period required by section 47(4) of the Act.

GK stated the Tenant has put the Landlords' property at significant risk. GK stated there is a lot of garbage in the rental unit and the rental unit is in a filthy condition. The Tenant denied GK's testimony. There was no evidence before me from the Landlords to corroborate GK's testimony. I find the Landlords have not proven, on a balance of probabilities, that the Tenant has put the Landlords' property at significant risk or that she has failed to maintain the rental unit in a clean and sanitary condition. Based on the foregoing, I find the Landlords have not proven there is cause to end the tenancy pursuant to sections 47(1)(d)(ii) and 47(1)(d)(iii) of the Act.

GK stated the Tenant has significantly interfered with or unreasonably disturbed the Landlords. The Tenant denied she has unreasonably disturbed to the Landlords. As the Landlords' evidence was not accepted into evidence, there was no evidence the Landlords gave the Tenant a written warning to the Tenant that she was unreasonably disturbing the Landlord. I find the Landlords have not proven, on a balance of probabilities, that the Tenant has unreasonably disturbed the Landlords. Based on the foregoing, I find the Landlords have not proven the Tenant has breached section 47(1)(d)(i) of the Act.

GK stated the Tenant has caused extraordinary damage to the rental unit. As the Landlords' evidence was not accepted for this hearing, there were no photos or other evidence to corroborate GK's testimony. GK did not call any witnesses to corroborate her testimony that the Tenant has caused extraordinary damage to the rental unit. The Tenant denied she has caused extraordinary damage to the rental unit. As such, I find the Landlords have not proven, on a balance of probabilities, that the Tenant has caused extraordinary damage to the rental unit. Based on the foregoing, I find the Landlords have not proven, on a balance of probabilities, that the Tenant has breached section 47(1)(f) of the Act.

GK stated the rental unit has two bedrooms. GK stated there are three people living in the rental unit. I find that the Landlord, has not proven, on a balance of probabilities, that there are an unreasonable number of occupants in the three-bedroom rental unit. unit. As such, I find the Tenant has not breached section 4(1)(c) of the At.

GK stated the Tenant has not performed repairs to the rental unit. GK admitted the Landlords have not given the Tenant a written request that the Tenant perform repairs to the rental unit, specify the nature of the repairs that are required and the date by which those repairs must be performed. As such, I find the Landlord has not complied with the requirements of section 47(1)(g) of the Act. Based on the foregoing, I find the Tenant has not breached section 47(1)(g) of the Act.

GK stated the Tenant has breached a material term of the tenancy agreement. *Residential Tenancy Policy Guideline 8* ("PG 8") provides information on, among other things, material terms. PG 8 states in part:

### **Material Terms**

A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the *tenancy agreement*, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.

[emphasis in italics added]



The tenancy between the parties arose from a Shelter Agreement. As such, there is no written tenancy agreement between the parties setting out the terms and conditions of the tenancy agreement. Accordingly, there are no material terms to this tenancy. As such, I find the Landlord has not proven, on a balance of probabilities, that the Tenant has breached a material term. Based on the foregoing, I find the Tenant has not breached section 47(1)(h) of the Act.

Based on the above, I find the Landlords have not proven any of the causes stated in the 1 Month Notice. As such, I find the Tenant has been successful in the Tenant's Application and I order the 1 Month Notice to be cancelled. The tenancy will continue until it is lawfully ended in accordance with the provisions of the Act. The Landlords' Application is dismissed without leave to reapply.

As the Landlords' Application has been dismissed, I decline to grant the Landlords an order for recovery of the filing fee for the Landlords' Application.

### Conclusion

The 1 Month Notice is cancelled. The tenancy will continue until it is lawfully ended in accordance with the provisions of the Act.

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 2, 2023

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Residential Tenancy Branch