



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR-MT, CNC-MT, PSF, LRE, FFT

### Introduction

The tenants applied to the Residential Tenancy Branch [the 'RTB'] for Dispute Resolution. The tenants asked me for the following five orders against the landlords.

1. Cancellation of a 10-day Notice to End Tenancy, issued on or about 20 December 2022 [the '10-day Notice'].
2. Cancellation of a One-month Notice to End Tenancy for Cause [the 'One-month Notice'].
3. Suspension of landlords' right to enter the rental unit [the 'Suspension Order'].
4. Provision of services or facilities as required by law [the 'Services Order'].
5. Reimbursement for the \$100.00 filing fee for this application.

The corporate landlords appeared at the continuation of this hearing on 16 June 2023 by way of an agent. The tenants did not appear.

### Preliminary Matter - Non-appearance at the Hearing

The tenants did not attend this hearing, although I left the teleconference hearing connection open throughout the hearing which commenced at 1100 hours and lasted for about 52 minutes. I confirmed:

1. that on 3 May the RTB had provided to the tenants the correct call-in numbers and participant codes in the Notice of Hearing;
2. that on 13 June the RTB reminded the tenants of this hearing and how to participate; and
3. by reviewing the teleconference system, that the landlords and I were the only ones who had called into this teleconference.

Rule 7.3 of the RTB Rules of Procedure reads:

7.3 Consequences of not attending the hearing

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 re-apply.

The tenants failed to attend this hearing, but I conducted it in their absence. RTB records satisfied me that they had correctly notified the tenants of this hearing and how to participate.

Issue to be Decided

After the first hearing of this application on 20 April, I cancelled the 10-day Notice, and dismissed the claims for the Suspension Order and the Services Order. This leaves me with one issue to decide:

Should I cancel the One-month Notice?

Background and Evidence

In the One-month Notice, the landlords claimed six causes to end the tenancy. During the hour-long hearing on 20 April, the landlords were able to give oral evidence in support of these six causes. And the tenants were able to respond with their own oral evidence.

But the landlords also sought to rely on documents to support these half-dozen causes. And there was insufficient time to do so. The tenants were agreeable to having the landlords submit these documents. And so I adjourned the hearing to continue on 16 June.

For the remainder of this application, I gave the parties an opportunity to finish presenting their argument and evidence at the reconvening of this hearing. I also gave leave to the landlords to call a witness, which they did.

But, as noted above, the tenants did not participate in this continuation of the hearing.

The landlords told me about the nature of this rental property. It is a property meant for families. The vast majority of residents are women who have left situations of domestic abuse or have come from substance-abuse-recovery facilities, and have brought their children to reside with them. Security, therefore, is particularly important to the landlords. They told me they have round-the-clock security, supported by cameras throughout the property. One of these cameras is affixed to the hall outside the tenants' unit.

People who enter the building can only do so with a special fob, and must pass by a front desk staffed by security. During the day, from Monday to Friday, the staff-person at this desk is the same individual [the 'Staff-person']. This period is the 'daytime shift' and it the busiest shift, with the most people coming and going from the building, and interacting with the Staff-person.

On 23 December, the Staff-person received a voicemail on her 'phone at her desk. The landlords submitted a copy of this voicemail [the 'Voicemail'], and it records an irate voice, shouting into the 'phone with the following message:

'[name of Staff-person], every time I look through my fucking stuff and realise there's shit missing, I think of fucking punching your face in! Now could you please check the fucking security cameras!!!'

The landlords said that the tenants left this Voicemail for the Staff-person, and just after doing so, interfered with the Camera so as to obscure its' ability to record what was happening in the hall outside the tenants' unit. The landlords corroborated this with a video recorded by the Camera, depicting what the landlords said is the tenants spraying something onto the Camera.

As a result (in part) of this Voicemail and the interference with the Camera, the landlords issued the One-month Notice. In drafting it, they cited as two of the causes to end the tenancy that the tenants had unreasonably disturbed another occupant, and seriously jeopardised the health or safety or lawful right of another occupant.

The tenants deny leaving the Voicemail for the Staff-person. But the tenants acknowledge calling a person with the same name as the Staff-person. The tenants said that they were very upset with that person about a child-protection allegation that the person had made against a friend of the tenants in another city. The tenants told me that police did come to their unit after this call, but that they spoke with her about an allegation of mischief. The tenants denied that they were ever tried for such an allegation, and they never pleaded guilty to uttering threats.

The tenants did say that the police placed release conditions on her, prohibiting her from contacting the Staff-person.

The Staff-person testified at the continuation of this hearing. The Staff-person swore to me the following about the Voicemail:

- the date of the Voicemail was 23 December, and she remembers it well because it made such an impact on her;
- she encounters the tenants everyday and knows the phone number of the tenants, and she recognised both on the Voicemail as belonging to the tenants;
- just after leaving this Voicemail, the Staff-person saw *via* the Camera the tenants step from their unit, into the hall, and spray something on the lens of the Camera;
- she was afraid that the tenants would next come to her desk and hurt her, and was so concerned that she closed and locked the window to her work station and called the police;
- the Staff-person later gave a statement to the police's Victim Services;
- shortly before this hearing, Victim Services contacted the Staff-person to update her on the prosecution of the tenants, and informed the Staff-person that the tenants indicated to the court that she would plead guilty to certain offences;
- despite this plea, and the knowledge that the court will likely impose probation conditions upon the tenants that would preclude the tenants from communicating with the Staff-person, she is still very nervous about the tenants being in the building - she is afraid that the tenants will be violent toward her;
- the Staff-person still feels anxious now when she talks about the Voicemail or listens to it (as she did in the hearing, and I heard the Staff-person stifling tears during her testimony); and
- whenever she sees the tenants now - which is daily - she averts her gaze in fear of the tenants, and, because of the presence of so many children in the building, is particularly frightful of what the tenants might do.

The landlords told me that the police recommended criminal charges against the tenants of uttering threats (*re* the Voicemail) and mischief (*re* the Camera).

### Analysis

I have considered all the statements made by the parties and the documents to which they referred me during these hearings. And I have considered all the arguments made by the parties.

The tenants did not take issue with service of the One-month Notice, or with its efficacy.

In analysing the causes that the landlords cited in their One-month Notice, I have reviewed section 47 (1) (e) of the *Residential Tenancy Act* [the 'Act'] and 'Residential Tenancy Policy Guideline 32: Illegal Activities'. I decided that, in analysing this dispute, I only need to concern myself with the causes cited in the One-month Notice that address

the Voicemail: while I heard evidence regarding the other causes, I decided that I could resolve this dispute by addressing only those causes that relate to the Voicemail.

The guideline does not bind me, but it is useful in my analysis. In particular, it suggests I consider:

1. that the landlords bear the burden of proving that the complained-of activity was illegal; and
2. the effect the activity has on the tenancy (and the guideline cites as an example of this: jeopardizing the physical safety of the landlord).

So, considering this guideline and section 47 (1) (e) of the Act, I ask myself this question: have the landlords proved that the Voicemail probably adversely affected the security, safety or physical well-being of another occupant of the building, that is, of the Staff-person?

Section 264.1 (1) of the *Criminal Code* (R.S.C., 1985, c. C-46) determines that anyone who utters a threat to cause bodily harm to any person commits a crime. Undeniably, the tenants uttered a threat to the Staff-person to hurt her, by punching her. And the Staff-person swore to me that the tenants have decided to plead guilty to this crime in relation to the Voicemail.

I do not accept the tenants' explanation that this was a message inadvertently left for someone else, somewhere else, in regard to something else. The Staff-person's evidence that she saw the tenants spray something on the Camera immediately after leaving this Voicemail undermines the tenants' story by aligning with the content of the Voicemail, *i.e.* concerns with the security cameras.

I found the Staff-person to be a compelling witness. Her recollection of the Voicemail and its circumstances was detailed and consistent. And her emotional reaction to the incident was genuine: I accept that the tenants truly frightened the Staff-person, and that the Staff-person continues to be afraid of the tenants. And I find that, in the circumstances, the Staff-person's fear is reasonable: her job forces her to see the Staff-person on a daily basis and, despite release conditions precluding contact between the tenants and the Staff-person, she is still afraid of what the tenants might do.

I am well-satisfied that the tenants' threat affected (and continues to affect) the security, safety and physical well-being of the Staff-person, who occupies the rental property five days a week as part of her employment.

Accordingly, I dismiss the tenants' application without leave to re-apply, and uphold the One-month Notice: this tenancy has ended.

### Conclusion

I make an Order of Possession in favour of the landlords. This order is effective two days after the landlords serve it upon the tenants. If the tenants or any occupant of the rental unit fails to comply with my order, then the landlords can file this order with the Supreme Court of British Columbia, and enforce it as an order of that court.

At the end of the tenancy the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Tenants and landlords both have an obligation to complete a move-out condition inspection at the end of the tenancy. To learn about obligations related to security deposits, damage and compensation, search the RTB website for information about after a tenancy ends.

I make this decision on authority delegated to me by the Director of the RTB under section 9.1(1) of the *Residential Tenancy Act*.

Dated: 28 June 2023

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Residential Tenancy Branch