



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

A matter regarding CAPITAL REGION HOUSING  
CORPORATION and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction and Preliminary Matters

On March 7, 2023, the Tenant made an Application for Dispute Resolution seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”).

This Application was originally set down for a hearing on June 23, 2023, at 9:30 AM and then was subsequently adjourned pursuant to my Interim Decision dated June 23, 2023. On that same day, this matter was then set down to be heard on July 11, 2023, at 11:00 AM.

The Tenant attended the final, reconvened hearing, with D.K., C.K., L.M., C.G., and E.M. all attending as advocates for the Tenant. K.L. attended the hearing as an agent for Landlord. 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.

At the original hearing, D.K. advised that the Tenant’s evidence was served to the Landlord by email on June 21, 2023. K.G., who attended the original hearing as an agent for the Landlord acknowledged that this was received, and she stated that she was prepared to respond to it despite it being served via email without consent between

both parties. Based on this testimony, I have accepted this evidence and will consider it when rendering this Decision.

K.G. advised that the Landlord's evidence was served to the Tenant by hand on June 16, 2023. The Tenant confirmed that he had reviewed this evidence, and that he was prepared to respond to it despite not understanding some of it. While this evidence was served late and not in accordance with the timeframe requirements of Rule 3.15 of the Rules of Procedure, as the hearing was adjourned and as the Tenant had additional time to review this evidence, I have accepted this evidence and will consider it when rendering this Decision.

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 is compliant with the *Act*.

#### Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is 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.

At the original hearing, all parties agreed that the tenancy started on July 1, 2021, that the subsidized rent was currently established at an amount of \$340.00 per month, and

that it was due on the first day of each month. A security deposit of \$550.00 was also paid. A copy of the signed tenancy agreement was entered into evidence for consideration.

The parties also agreed that the Notice was served to the Tenant by being attached to his door on February 24, 2023. The reasons the Landlord served the Notice were because the "Tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord [and/or] seriously jeopardized the health or safety or lawful right of another occupant or the landlord" and because of a "Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so." The effective end date of the tenancy was noted as March 31, 2023, on the Notice.

K.G. advised that the Tenant was warned in writing for an incident on April 25, 2022, where the Tenant did not have his key and was buzzing other residents in the building for access. As well, she stated that he used foul and abusive language to the residents. She then testified that the Tenant was warned again in writing on May 6, 2022, for the same buzzing behaviour and for allowing a female guest to ride her bike down the halls. She stated that a meeting was held with the Tenant's mother and the police on May 31, 2022, and the Tenant agreed not to give out his key to other people.

She submitted that another breach letter was issued on July 5, 2022, because the Tenant would frequently allow one particular guest into the building who would constantly harass others and cause problems. The presence of this guest, and his egregious behaviours, prompted the Landlord to hire private security to patrol the building.

She then testified that another breach letter was issued on October 19, 2022, because the Tenant allowed a guest into his rental unit, and this guest's girlfriend died as a result of a drug overdose. As well, it was noted that the Tenant was observed harassing, yelling, and generally frightening other residents of the building. She noted that other residents of the building reported feeling fearful and unsafe due to the Tenant's behaviour.

Finally, she advised that the Tenant was issued a final breach letter on February 27, 2023, because a guest of the Tenant physically assaulted another resident of the building, resulting in a railing being broken. As well, she noted that this guest was reported to have stolen a food delivery order from another resident of the building.

She referenced the documentary evidence of breach letters, and the impact statement of a resident who considered moving based on the above issues. She stated that there are many residents in the building who are extremely vulnerable, and she testified that the Tenant was overheard informing his guests to watch out for “snitches” in the building.

C.G. advised that all of these incidents have to do with guests who take advantage and bully the Tenant. She testified that the one main culprit is in jail currently and there is a restraining order against him. She confirmed that the Tenant allowed a different guest into the rental unit, whose girlfriend had subsequently overdosed and died. While traumatic, it was determined that the Tenant was not at fault for this death. She stated that this had not been the first time that the Tenant’s housing had been affected by persons that he allowed in a rental.

At the final, reconvened hearing, D.K. referred to the warning letter dated April 25, 2022, and he indicated that these issues occurred over a year ago and had been resolved. The Tenant testified that he lost his keys, that he noticed many people showing up at the door, and that they had been buzzing other residents of the building for only a short period of time. He stated that he was given a replacement set of keys two days later and it was his belief that other residents of the building may have also been responsible for these people buzzing. He submitted that the problematic person that has been primarily responsible for the major issues takes advantage of him, and this person has been incarcerated many times.

C.K. advised that the Tenant suffers from a number of developmental and learning issues, that he is unable to regulate his emotions, and that he cannot recognize the consequences of his actions.

D.K. then referenced the issues in the summer of 2022 onwards, and stated that the problematic person was not permitted in the building by the Tenant because the Tenant did not want him there. He indicated that this person was eventually arrested.

The Tenant testified that he did not let this problematic person into the building in February 2023, nor was he present for that incident. He stated that there have been no issues since the Notice was served.

C.G. advised that she met with the Landlord to discuss the problems with the problematic person, and how this person attempts to take advantage of the Tenant. She

stated that the police are supportive of the Tenant, and that this person is not a guest of the Tenant, but pushes his way into the building.

K.L. advised that there was a caretaker available 24 hours a day, and the Tenant could have received a key immediately if he was locked out of the building. As such, it was unnecessary for him to continually buzz people, but this demonstrated a pattern of behaviours that the Tenant engaged in. As well, she testified that in May 2022, the Landlord attempted to work with the Tenant to provide him with a plan and to help him in case the problematic person was in the building; however, she stated that the Tenant never reached out for any assistance or notified the Landlord. She then indicated that there was never a service call made to repair the front door, so this would support their claim that whenever this problematic person would appear, the Tenant would let him in. Finally, she advised that the Tenant would accuse other residents of the building of being “snitches”, and would blame them for him being evicted.

### 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.

In considering this matter, I have reviewed the Landlord’s Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52 and I find that it is a valid Notice.

I find it important to note that Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part as follows:

#### ***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:***

*(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*

*(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;*

In reviewing the totality of the evidence before me, I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the Landlord has the burden to provide sufficient evidence over and above their testimony to establish the reasons for service of the Notice. Given the contradictory testimony and positions of the parties, I may turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

While the submissions of the Tenant and his advocates focussed primarily on the abusive relationship between this problematic person and the Tenant, and that this power imbalance was due in part to the Tenant's cognitive challenges, I find it important to note that there is documented, undisputed evidence of the Tenant's own actions that are separate from the interactions with this particular person. Given that the Tenant has shown a pattern of disturbing other residents by buzzing to get into the building, by allowing other guests into the building of which one person passed away due to a drug overdose, and by behaving inappropriately and making offensive comments to other residents of the building, I find that the Tenant has demonstrated a consistent pattern of behaviour that was of his own volition, and had little to do with any influence from this other person. While I acknowledge that the Tenant may have some challenges, not all of these incidents or behaviours can be attributed solely to the alleged manipulation of this other person.

Considered in its totality, I find the Landlord to be a more credible witness than the Tenant. The Landlord provided consistent testimony, which was supported with documentary evidence where available. I am satisfied that there is sufficient compelling and persuasive evidence before me to support the issuance of this Notice under the

reasons of significantly interfering with or unreasonably disturbing another occupant or the Landlord and seriously jeopardizing the health or safety or a lawful right or interest of the Landlord or another occupant.

Ultimately, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 47 and 55 of the *Act* that takes effect on **August 31, 2023, at 1:00 PM** after service of this Order on the Tenant, as requested by the Landlord.

### Conclusion

The Tenant's Application is dismissed without leave to reapply.

The Landlord is provided with a formal copy of an Order of Possession effective on **August 31, 2023, at 1:00 PM** after service on the Tenant. Should the Tenant or any occupant on the premises 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: July 13, 2023

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Residential Tenancy Branch