



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

### Dispute Codes

Landlords: OPC, OPB, OPN, MNRL, MNDL, MNDCL, FFL  
Tenant: CNC, MNRT, MNDCT, RR, AAT, LRE, RPP, OLC, FFT

### Introduction

This hearing was convened as a result of the parties' applications under the *Residential Tenancy Act* (the "Act").

The Landlords applied for:

- an order of possession under a one month notice to end tenancy for cause dated April 3, 2023 (the "One Month Notice") pursuant to section 55 of the Act;
- an order of possession under a fixed term tenancy agreement pursuant to section 55 of the Act;
- an order of possession under a notice to end tenancy given by the Tenant pursuant to section 55 of the Act;
- compensation of \$1,850.00 for unpaid rent or utilities pursuant to section 67 of the Act;
- compensation of \$33,000.00 to repair the damage that the Tenant, their pets or their guests caused during the tenancy pursuant to section 67 of the Act;
- compensation of \$1,369.00 for monetary loss or other money owed pursuant to section 67 of the Act; and
- authorization to recover the filing fee for the Landlords' application from the Tenant pursuant to section 72.

The Tenant applied for:

- cancellation of the One Month Notice pursuant to section 47 of the Act;
- compensation of \$136.00 for the cost of emergency repairs made during the tenancy pursuant to section 33 of the Act;
- compensation of \$25,000.00 for monetary loss or money owed by the Landlord pursuant to section 67 of the Act;
- an order for the Landlords to allow access to the unit or site for the Tenant and/or the Tenant's guests pursuant to section 30 of the Act;
- a rent reduction of \$750.00 for repairs, services or facilities agreed upon but not provided, pursuant to section 65 of the Act;

- an order suspending or setting conditions on the Landlords' right to enter the rental unit pursuant to section 70(1) of the Act;
- an order for the Landlords to return the Tenant's personal property seized or received by the Landlords contrary to the Act or the tenancy agreement pursuant to section 65 of the Act;
- an order that the Landlords comply with the Act, the regulations, or tenancy agreement pursuant to section 62 of the Act; and
- authorization to recover the filing fee for the Tenant's application from the Landlords pursuant to section 72.

One of the Landlords, HKB, attended this hearing and gave affirmed testimony.

No one attended this hearing on behalf of the Tenant. I left the teleconference hearing connection unlocked until 9:41 am in order to enable the Tenant to call into the hearing scheduled to start at 9:30 am. I confirmed that the correct call-in numbers and participant access code had been provided in the notice of dispute resolution proceeding. I used the teleconference system to confirm that HKB and I were the only ones who had called into the hearing.

#### Preliminary Matter – Service of Dispute Resolution Documents

HKB confirmed that the Landlords' notice of dispute resolution proceeding package (the "Landlords' Proceeding Package") and documentary evidence were sent to the Tenant via registered mail on April 29, 2023. The Landlords submitted a registered mail tracking number as proof of service (first of two tracking numbers referenced on the cover page of this decision). I find the Tenant was served with the Landlords' Proceeding Package and documentary evidence in accordance with sections 88 and 89 of the Act.

#### Preliminary Matter – Severing Unrelated Claims

Rules 2.3 and 6.2 of the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") state as follows:

##### **2.3 Related issues**

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

##### **6.2 What will be considered at a dispute resolution hearing**

The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application.

The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [*Related issues*]. For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.

(emphasis underlined)

The Landlords seek an order of possession but have included other claims in their application. Aside from the Landlords' claim to recover the filing fee, I find the other monetary claims in the Landlords' application are unrelated to the issue of the Landlords' claims for an order of possession. Pursuant to Rule 6.2 of the Rules of Procedure, I sever and dismiss the Landlords' unrelated monetary claims with leave to re-apply.

#### Preliminary Matter – Tenant's Non-attendance

Rules 7.3 and 7.4 of the Rules of Procedure state:

##### **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.

##### **7.4 Evidence must be presented**

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

The Tenant did not attend this hearing to present evidence regarding the merits of the Tenant's own application. Accordingly, in the absence of any evidence or submissions from the Tenant, I dismiss the Tenant's claims other than the claim to dispute the One Month Notice without leave to re-apply.

#### Issues to be Decided

1. Should the One Month Notice be cancelled?
2. Are the Landlords entitled to an order of possession?
3. Are the Landlords entitled to reimbursement of their filing fee?

#### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments

relevant to the issues and findings in this matter are reproduced here. The principal aspects of the parties' applications and my findings are set out below.

This tenancy commenced in or around October 2020 for a fixed term ending in October 2021. The tenancy continued thereafter on a month-to-month basis without the parties renewing their agreement. Rent is \$1,850.00 due on the first day of each month. The Tenant paid a security deposit and pet damage deposit of \$925.00 each.

The parties had a previous hearing in March 2023 (file number referenced on the cover page of this decision), in which a different notice to end tenancy for cause was set aside. HKB stated that the Landlords were not prepared for that hearing as they had a recent death in the family.

The Landlords submitted a copy of the One Month Notice into evidence. This notice is signed by the Landlords and had an effective date of April 30, 2023. The reasons for this notice are:

- Tenant is repeatedly late paying rent
- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord
- Tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- Tenant or a person permitted on the property by the tenant has 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 One Month Notice contains the following details of cause (portions redacted for privacy):

City of [city name] notices Complaints by neighbours reg garbage on yard all over

1. Notice from City of [city name] July9/2021 -Overgrown grass and weeds all over property and sides
2. July9/2021accumulation of weeds and tall grass all over the property and sides. 3.May2/2022 unsightly Premises and overgrown grass August 12/2022 Overgrown grass and weeds and garbage all over the property.

November 17/2022 Unsightly premises. Everytime we sent her notices but she ignored them all the way from [city] we cut the grass and clean the yard and sides of property as required by By law officer.

3 Late rent and chq NST July 1/2021 Jan 2022 late rent Sep 2022 late half rent by [community church] on Sep 8/2022 late rent Nov, Oct 2022 & Jan/2023 . also received very abusive language

4. Our fence and windows are broken by her dogs our Lawn grass totally destroyed by her dogs.

5. We had cleaned the yard in the presence of By law officer [WC] throw dirty stinky hoarded garbage into the [landfill] on Feb 3 & 4 2023 because all the neighbours complaining to city this is duty to maintain we don't know how much damage inside of house because she never allowed us to inspect the house from inside since Oct 2020 today's date our house has damaged too much by her (sic)

HKB confirmed that the One Month Notice was served on the Tenant using various methods including registered mail and by leaving a copy in the Tenant's mailbox. The Landlords submitted a registered mail tracking number (second of two tracking numbers) which indicates that the package was sent on April 4, 2023.

According to the Tenant's application, the Tenant received a copy of the One Month Notice in the Tenant's mailbox on April 11, 2023.

The Landlords submitted evidence including:

- Before photos of the rental unit and property taken in October 2020
- Photos of damaged fence and lawn taken in 2021 and 2022
- Photos of front yard covered in piles of garbage, including rotten food, dog feces, and the Tenant's furniture and personal belongings, taken in February 2023
- Photos of cleanup done by the Landlords and bylaw officer WC, taken in February 2023
- Receipts for cleaning up the Tenant's garbage and moving it to landfill
- Warning letters from the city regarding unsightly premises issued in 2022

The Landlords submitted that the smell was so bad that neighbours were complaining to the city, which resulted in multiple warning letters. HKB stated that the Tenant lied about having only two dogs, when up to four dogs were seen at the property. HKB stated that there were complaints from neighbours about animal abuse.

HKB confirmed that the Tenant is still residing in the rental unit. HKB testified that the Tenant had yelled at the Landlords to get off the property, even though the Landlords informed the Tenant that the property required cleaning and that there were many complaints from the neighbours.

### Analysis

#### *1. Should the One Month Notice be cancelled?*

Section 47 of the Act permits a landlord to end a tenancy for cause upon one month's notice to the tenant. Section 47(1) describes the situations under which the landlord will have cause to terminate the tenancy.

Section 52 of the Act states that in order to be effective, a notice to end tenancy given by a landlord must:

- be in writing
- be signed and dated by the landlord giving the notice
- 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 (Residential Tenancy Branch) form.

Section 47(2) further requires that the effective date of a landlord's notice under section 47 must be:

- (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.

I have reviewed the One Month Notice and find that it complies with the requirements of section 52 of the Act in form and content. I find the effective date of the One Month Notice does not comply with section 47(2) of the Act. Pursuant to section 53(2) of the Act, I find the effective date is deemed to be May 31, 2023.

I find the Tenant was served with the One Month Notice on April 11, 2023 in accordance with section 88(g) of the Act. The Tenant submitted her application to dispute the One Month Notice on April 20, 2023. I find the Tenant made her application within the 10-day limit required under section 47(4) of the Act.

Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, Rule 6.6 of the Rules of Procedure places the onus on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

The reasons provided in the One Month Notice for ending the tenancy correspond to circumstances described in sections 47(1)(b), (d), and (f) to (h) of the Act.

For the reasons that follow, I am satisfied on a balance of probabilities that the Landlords have demonstrated cause under section 47(1)(d)(iii) for putting the Landlords' property at significant risk. As such, I do not find it is necessary to discuss all of the reasons for ending the tenancy stated in the One Month Notice.

Section 47(1)(d)(iii) of the Act states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk.

I find the photos submitted by the Landlords dated February 3 and 4, 2023 show a rotted and damaged couch outside the rental unit, as well as other broken furniture, piles of filthy garbage, and personal belongings strewn across the front yard. I find the photos show the Landlords and the bylaw officer removing bags of garbage from the property. I accept the Landlords' evidence that there were multiple complaints from neighbours and warning letters from the city. I accept the Landlords' evidence that the Tenant also allowed her dogs to defecate all over the front yard. I accept the Landlords' undisputed evidence that the Tenant refused to cooperate with the Landlords or clean up the property. I find the photos submitted by the Landlords show that the Tenant had allowed the front yard to become extremely dirty and unsanitary. Therefore, I am satisfied that the Tenant has put the rental property at significant risk, including risk of serious damage to the front yard and attracting pests to the property.

Based on the foregoing, I find the Landlords have established cause for ending this tenancy under section 47(1)(d)(iii) of the Act. The Tenant's claim to cancel the One Month Notice is dismissed without leave to re-apply.

## *2. Are the Landlords entitled to an order of possession?*

Section 55(1) of the Act states that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if:

- the landlord's notice to end tenancy complies with section 52 of the Act in form and content; and
- during the dispute resolution proceeding, the director dismisses the tenant's application or upholds the landlord's notice.

Having found the One Month Notice to comply with requirements of section 52 of the Act and having dismissed the Tenant's claim to cancel the One Month Notice, I find the Landlord is entitled to an Order of Possession under section 55(1) of the Act.

The corrected effective date of the One Month Notice, or May 31, 2023, has already passed. Pursuant to section 55(1) of the Act, I grant an Order of Possession to the Landlord effective two (2) days after service of the Order upon the Tenant.

I find it is not necessary to also consider the Landlords' claims for an order of possession for the other reasons stated in the Landlords' application.

I note that as explained in Residential Tenancy Policy Guideline 30. Fixed Term Tenancies, a vacate clause can only be included in a fixed term tenancy agreement if the landlord or the landlord's close family member will move into the rental unit at the end of the fixed term, or if the tenancy agreement is a sublease. If the parties have not included a valid vacate clause and do not renew the tenancy agreement, the tenancy agreement does not expire at the end of the fixed term but is deemed to automatically continue on a month-to-month basis on the same terms.

### *3. Are the Landlords entitled to reimbursement of their filing fee?*

The Landlords have been successful in obtaining an Order of Possession, which is sought in the Landlords' own application. Therefore, I grant the Landlords reimbursement of their filing fee under section 72(1) of the Act.

Pursuant to section 72(2)(b) of the Act, the Landlords are authorized to retain \$100.00 from the Tenant's security deposit held by the Landlords in full satisfaction of the filing fee awarded.

### Conclusion

The Landlords are successful in establishing cause for ending this tenancy under the One Month Notice. The Landlords' claim to recover the filing fee is granted. The



Landlords are authorized to retain **\$100.00** from the Tenant's security deposit in full satisfaction of the filing fee awarded.

Pursuant to section 55(1) of the Act, I grant an Order of Possession to the Landlords effective **two (2) days** after service upon the Tenant. 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 remaining monetary claims in the Landlords' application are severed under the Rules of Procedure and dismissed with leave to re-apply. Leave to re-apply does not extend any applicable time limits.

The Tenant's application is dismissed in its entirety without leave to re-apply.

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 31, 2023

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Residential Tenancy Branch