



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding SECURE SELF STORAGE 2013  
INC. and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

Tenant Application 1: LRE, OLC, FF  
Tenant Application 2: CNC, OLC, FF

### **Introduction**

This hearing convened to deal with the tenants' two applications for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenants applied on July 13, 2023 for an order suspending or setting conditions on the landlord's right to enter the rental unit, an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, and recovery of the filing fee.

On August 28, 2023, the tenants filed another application for dispute resolution requesting an order cancelling the One Month Notice to End Tenancy for Cause (Notice/1 Month Notice) issued by the landlord, an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, and recovery of the filing fee.

The Residential Tenancy Branch (RTB) administratively scheduled the two hearings to be heard on the same day and time.

The parties described on the cover page attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties apart from counsel were affirmed. The parties confirmed receipt of the other's evidence. The landlord confirmed receipt of the tenant's application.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral, written, and other evidence before me that met the requirements of the RTB Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

## **Preliminary Matters**

Rule 2.3 states that 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.

In these two applications, the tenants listed multiple claims. I find the most urgent matter to consider is the tenant's request for cancellation of the Notice, as this determines whether the tenancy ends or continues. I find that not all the additional claims on the applications are sufficiently related to the primary issue. I will, therefore, only consider the tenant's request to cancel the Notice and the tenant's application to recover the cost of the filing fee at this proceeding.

I will determine whether the balance of the tenant's two applications will be dismissed with or without leave to reapply within this Decision.

Additionally, the evidence showed that the parties have been in multiple dispute resolution proceedings prior to the current one. The evidence showed that the landlord has issued the tenants 3 prior Four Month Notices to End Tenancy for Conversion. Through dispute resolution, all 3 Four Month Notices were cancelled.

The landlord further served the tenants a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. That matter was resolved prior to a hearing as the tenants paid the amount listed on the 10 Day Notice.

The parties were informed that I would consider the merits of the 1 Month Notice apart from the other Notices to end the tenancy, as this dispute concerned an allegation by the landlord that they had caused to end the tenancy.

### Issue(s) to be Decided

Has the landlord submitted sufficient evidence to support the 1 Month Notice to end the tenancy? Should the Notice be cancelled or enforced?

### Background and Evidence

I heard evidence the tenancy began on September 1, 2015, for a monthly rent of \$800, and a security deposit of \$800 being paid by the tenants. Counsel submitted without dispute that the landlord has returned \$400 from the tenants' security deposit, currently holding a security deposit of \$400. Current monthly rent is \$942.12.

The rental unit is a house located on an industrial storage facility site where the landlord's business is located.

The 1 Month Notice was dated August 16, 2023, for an effective move out date of October 1, 2023. The Notice was served by registered mail on August 16, 2023. The tenant confirmed receiving the Notice on August 19, 2023. The Notice was filed in evidence.

The causes listed on the 1 Month Notice are:

1. Tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord
2. Tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.
3. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

In the Details of Causes portion of the Notice, the landlord wrote the following:

Details of the Event(s):

Reference our hand delivered letter to the tenants dd July 10/23 where we advised the tenants our contractor, Apex EHS Services would be onsite on July 19/23. The tenants denied Apex access.  
Reference the tenants' hand delivered letter to the landlord's office dd July 14/23 where they deny the landlord or its contractors the right to reasonable access to the rental property located at [REDACTED] BC on July 19/23.  
Reference our door posting letter to the tenants dd July 17/23 written by our lawyer to the tenants advising them of their obligation to allow entry if notice is served pursuant to the RTA.  
Reference our registered mail letter to the tenants dd July 20/23 where we advised the tenants our contractor, Apex EHS Services would be onsite on Aug. 8/23. The tenants again denied Apex access.  
Reference the tenants' hand delivered letter to the landlord's office dd Aug. 3/23 where they deny the landlord or its contractors the right to reasonable access to the rental property located at [REDACTED] BC.  
Reference the registered mail letter to the tenants dd Aug. 9/23 sent by our lawyer where the tenants were advised that Apex EHS Services would be onsite on Aug. 16/23. The tenants denied Apex access for a third time.

In accordance with Rule 7.18, the landlord proceeded first to provide evidence to prove the causes listed on the Notice.

The landlord's counsel submitted a considerable amount evidence in response to the claims listed in the two applications. Counsel stated that they would defer to their written documents, including a written summary, which would encompass the landlord's response.

The relevant part of the written summary is reproduced as follows, with personal information redacted:

24. On July 10, 2023, the Landlord's agent served the Tenants with a Notice of Entry in accordance with section 29 of the *RTA* via hand delivery. The purpose, as set out in the Notice, was to conduct a hazardous materials survey.

**First Apex Notice of Entry, Tab R17**

25. Via a letter dated July 14, 2023, the Tenants acknowledged receipt of the Notice of Entry and advised the Landlord's agent that access to the Rental Property would not be permitted.

**Letter from Tenants re Apex Notice of Entry, Tab R18**

26. On July 17, 2023, the Landlord's lawyer wrote to the Tenants to advise them that the July 10, 2023 Notice of Entry was provided in accordance with section 29 of the *RTA*, that they were required to allow entry under the terms of the tenancy agreement and that unreasonably refusing entry constitutes grounds to issue a One Month Notice to End Tenancy. The Tenants were also provided with a list of pro bono resources and were encouraged to seek independent legal advice with respect to their position.

**Letter from AHBL to Tenants re Entry Obligations, Tab R19**

27. Apex attended on July 19, 2023 to conduct the hazardous materials survey, but was denied entry by the Tenants. Costs were incurred by the Landlord as a result of the Tenants denying entry.
28. On July 20, 2023, the Landlord's agent served the Tenants with a Notice of Entry in accordance with section 29 of the *RTA* via registered mail for the purpose conducting a hazardous materials survey. The second Notice of Entry was received by the Tenants on July 26, 2023.

**Second Apex Notice of Entry, Tab R20**

29. Via a letter dated August 3, 2023, the Tenants acknowledged receipt of the Second Notice of Entry and advised the Landlord's agent that access to the Rental Property would not be permitted.

**Letter from Tenants re Apex Notice of Entry, Tab R22**

30. Apex attended on August 8, 2023 to conduct the hazardous materials survey, but was denied entry by the Tenants. Costs were incurred by the Landlord as a result of the Tenants denying entry.

**Letter from Apex Confirming Entry was Denied, Tab R21**

31. On August 9, 2023, the Landlord's lawyer wrote to the Tenants to provide them with a third Notice of Entry in accordance with section 29 of the *RTA*. The Third Notice of Entry was received by the Tenants on August 12, 2023. The Tenants were reminded that they were required to allow entry under the terms of the tenancy agreement and that unreasonably refusing entry constitutes grounds to issue a One Month Notice to

End Tenancy. The Tenants were also provided with a list of pro bono resources and were encouraged to seek independent legal advice with respect to their position.

**Third Apex Notice of Entry, Tab R24**

32. On August 15, 2023, the Landlord's agent received a call from a man named [ ] at the BC Residential Tenancy Compliance and Enforcement Division who inquired about the notices to enter the Rental Property. The Landlord's agent advised [ ] that the Landlord intended to demolish the Rental Property in order to utilize the land for business purposes. In order to receive a demolition permit, the City of Vernon requires that a hazardous materials survey be completed. The Landlord's agent proceeded to go over the Notice of Entry letters as well as what was mentioned in the letters. She specifically pointed out that the letters encouraged the Tenants to seek independent legal advice and provided them with a list of pro bono resources. The letters were subsequently sent to [ ] via email as well.

**Email from Landlord to RTB Compliance, Tab R28**

33. During the call, [ ] confirmed that he went over a Landlord's right to enter the premises with the Tenants. He ended the call by advising that he was not going to open a file (which he also advised the Tenants).
34. Apex attended on August 16, 2023 to conduct the hazardous materials survey, but was denied entry by the Tenants. Costs were incurred by the Landlord as a result of the Tenants denying entry.

Counsel submitted that the tenants were served 3 separate notices of entry, but in essence, the tenants were provided 6 opportunities to allow entry to the company hired by the landlord to conduct a limited hazardous materials inspection and testing, as the tenants were told they could work with the company for another time and date.

Counsel said the tenants were given proper notices of entry under the requirements of the Act and they do not have permission to deny access, the tenants were explicitly warned about the consequences, and despite that, demonstrated a pattern of denying access. Counsel submitted that the tenants breached a material term of the tenancy agreement regarding entry by the landlord into the rental unit.

Landlord's witness -

The witness stated that they were the operations manager of the company hired by the landlord to conduct an inspection and testing for hazardous materials. The witness testified that the testing they intended to conduct was routinely done while the site is occupied. The witness stated that abatement can be done while the unit is occupied, depending on what is found. The witness testified that routinely a 1" x 1" sample size is collected and if necessary, the site of the sample is sealed up. The witness said asbestos was something they would be looking to determine whether it was present and that most homes built prior to 1990 would contain asbestos. The witness stated that the 1<sup>st</sup> phase of testing is localized, but would assist in determining whether further work is required.



The tenant cross-examined the witness.

Tenant's response –

The tenants described in their application the reason for seeking cancellation of the Notice, reproduced as follows:

*We strongly believe they are violating the RTA and tenancy agreement and being deceptive again. This Notice is retaliation, continuing harassment and an abuse of process. We have endured 7 eviction notices, 4 this year (3 illegal). In 2021 we had 2 dispute res. & 1 BCSC hearing. In 2023 we had 1 dispute res. in Apr. This will now be the 3rd dispute scheduled since July/23. Root cause here is the same as the hearing on 10-31-2023. Arguments to be used here will be more extensive and different.*

The tenant argued that the purpose of the landlord's entry must be reasonable and that in this case, the reason was for demolition of the rental unit and was not reasonable.

The tenant provided a considerable amount evidence in response to the landlord's 1 Month Notice and their applications. I have reproduced some of the relevant parts of the written submissions below:

- Lack of Good Faith. The landlord is acting dishonestly, and has failed to show they intend to do what they say they are going to do. They have tried to defraud us and deceive us (**C6** 7-20-23 Landlord envelope & letter, **pg.3, para. 1**). They have an ulterior purpose for ending the tenancy. They are trying to avoid obligations under the RTA and the tenancy agreement. They do not want to maintain the rental unit in a state of repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant (section 32(1) of the RTA).
- As this matter (**C3** 7-10-23 Landlord (LI) envelope & letter) was already filed for dispute resolution (**C4** 7-14-23 Tenant letter to LI (amended)), the directly related "Cause" created by their deliberate actions and violations resulting in this "Notice" is an abuse of the dispute resolution process.
- The landlord has not fulfilled the requirements as set out in the Residential Tenancy Act. The landlord wishes to enter for a purpose that is not reasonable, justified or essential.
- The root of the "Cause" is an arbitrary inspection by contractors to find and identify hazardous materials.
- The landlord knew or ought to have known about hazardous materials which were required by law to be disclosed at the time of sale and purchase.
- The landlord had plenty of time after the purchase and before our tenancy start date to do a hazardous materials survey.
- The landlord chose not to create a condition report at the beginning of the tenancy, but has now tried to force us to allow a very specific report 8 years later without proof of a legitimate reason.
- The landlord's intent was to create further excessive hardships for us after just evicting us from our storage unit for no reason and forcing us to move everything into our residence. They now are attempting to contaminate our possessions through exposure to hazardous materials. When hazardous materials are disturbed, the contamination levels present in the home from their exposure is much greater than when they are undisturbed. We were told this by an Environmental Health Officer from the Province of B.C. Possessions can be damaged by the contamination

resulting from testing, and the high costs of forced abatement or legal disposal of them will create great hardships for us. Deliberate exposure of hazardous materials substantially degrade the safety while living in the home.

- The landlord knows we are financially challenged due to having to confirm information for our reception of the provincial SAFER grant for several years now.
- We have not blocked the landlord ever before from entering the unit when they came to do repairs on their appliances or to replace the hot water tank, i.e. a repair, improvement or constructive purpose. We are refusing to allow unnecessary damage that will not be repaired while we live here and that will create a significant health hazard for the rest of our tenancy.
- The landlord is using this inspection as a fishing trip to find another reason to justify our eviction.

The tenant further submitted they had knowledge of hazardous material testing and what is involved due to past employment in that field.

### Analysis

Where a tenant applies to dispute a Notice, the landlord has to prove, on a balance of probabilities, the grounds on which the Notice is based and should be upheld. If the landlord fails to prove the Notice is valid, it will be cancelled. The burden of proof is based on the balance of probabilities, meaning the events as described by one party are more likely than not.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

A landlord does not have to provide sufficient evidence for all causes, only on one, to meet their burden of proof.

Upon review of the 1 Month Notice to End Tenancy, I find that Notice to be completed in accordance with the requirements of section 52 of the Act.

After reviewing the evidence, I find the landlord had sufficient reason to end the tenancy when they issued the 1 Month Notice to the tenants on August 16, 2023.

After considering all of the written and oral submissions submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the tenants have seriously jeopardized a lawful right or interest of the landlord and breached a material term of the tenancy agreement, which addressed the landlord's right to enter the rental unit after proper notice in accordance with section 29 of the Act.

Having reviewed the evidence, I find the landlord submitted 3 separate notices of entry containing the required information under the Act and the tenant denied each entry. The tenants were provided an opportunity after each planned entry to reschedule, according to the undisputed evidence.

While the tenants argue that the purpose for the entry was not reasonable as the inspection and sampling would expose the tenants to hazardous materials, I accept the testimony of the landlord's witness who is a manager for the inspection company. The witness testified that the sampling size was small and is routinely done while the premises are occupied. I do not find it logical that the company would test for hazardous materials in a way that the tenants would be at risk, which potentially exposes the company to legal liability.

Overall, I find a landlord inspecting their property for asbestos, a hazardous material, to be a reasonable purpose and it is a lawful right of the landlord.

I note that although previous Decisions made between the parties described the tenancy as "strained", I have not taken any of those submissions into account. The parties were informed that this 1 Month Notice stands on its own and its merits would be considered based on the evidence for the issues raised in the Notice. The previous disputes were for unrelated matters. The landlord's good faith intent is not taken into account when considering the merits of a notice to end a tenancy for cause. The good faith element is considered on notices to end the tenancy under sections 49 and 49.2 of the Act.

Taken in totality, I find the landlord has submitted sufficient evidence to prove the tenants seriously jeopardized a lawful right or interest of the landlord, which is to inspect their property for asbestos, by unlawfully denying the landlord's entry multiple times after proper notice of entry.

For this reason, I **dismiss** the tenants' application requesting cancellation of the Notice, without leave to reapply, as I find the 1 Month Notice dated August 16, 2023, is valid, supported by the landlord's evidence, and therefore, enforceable. As a result, I uphold the 1 Month Notice and I **order** the tenancy ended on the effective date of that Notice, or October 1, 2023.

Under Section 55(1)(b) of the Act, if a tenant's application to cancel a Notice has been dismissed, I must grant the landlord an order of possession.

I grant the landlord an order of possession of the rental unit effective and enforceable at 1:00 pm on November 30, 2023, having taken into account the length of the tenancy to determine the effective move-out date.

Should the tenants fail to vacate the rental unit by the time and date on the order after being served, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenants are **cautioned** that costs of such enforcement, **including bailiff fees**, are recoverable from the tenants.



As I have granted the landlord an order of possession of the rental unit, I dismiss the balance of the tenants' two applications without leave to reapply, as the claims relate to an ongoing tenancy. For this reason, as the tenants' two applications were not successful, the tenants' requests for recovery of the filing fees are dismissed, without leave to reapply.

I must further note that after the tenant concluded their response to the landlord and counsel's submissions in support of the 1 Month Notice, the tenant expressed that they felt rushed to finish and were confused about the process of the landlord proceeding first in the hearing. While the tenant was not rushed due to their fulsome response, the tenant was given further opportunity to make further submissions. The tenant did so, and was repeatedly asked if they had anything further to say. When the tenant finally said "no", the hearing concluded after 74 minutes.

### Conclusion

The tenants' application seeking cancellation of the 1 Month Notice is dismissed, without leave to reapply, as I find the landlord's Notice valid, supported by the evidence and therefore, enforceable.

The landlord is granted an order of possession of the rental unit effective at 1:00 pm on November 30, 2023.

The balance of the tenants' two applications are dismissed, without leave to reapply, for the reasons stated above.

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: November 02, 2023

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Residential Tenancy Branch