



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding SANFORD HOUSING SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Introduction**

This hearing dealt with the tenant's Application for Dispute Resolution (Application) filed under the *Residential Tenancy Act* (the "Act") on August 3, 2023, for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the One Month Notice).

This hearing also dealt with the landlord's Application filed under the Act on September 7, 2023, for:

- enforcement of the One Month Notice; and
- recovery of the \$100.00 filing fee.

### **Service of Notices of Dispute Resolution Proceeding (Proceeding Packages) and Evidence**

The parties acknowledged receipt of each other's Proceeding Packages and documentary evidence. No concerns regarding service were raised. I therefore found them duly served for the purposes of the Act and the Residential Tenancy Branch Rules of Procedure (Rules of Procedure). The hearing of both Applications proceeded as scheduled and I accepted the documentary evidence before me from both parties for consideration.

### **Issues to be Decided**

Is the tenant entitled to cancellation of the One Month Notice? If not, is the landlord entitled to an Order of Possession?

Are the parties entitled to recovery of their respective filing fees?

## Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

The parties agreed that the tenant lives on the 11<sup>th</sup> floor of a multi-unit building with 11 floors and 147 rental units. They also agreed that the tenant has lived there for approximately 8 years, that rent is due on the first day of each month, and that the rental unit is a bachelor suite approximately 400 square feet in size.

The agent for the landlord stated that there have been three serious incidents in which the tenant has left items on the stove while it was on and unattended, causing the building fire alarm to sound, the fire department to attend, and small fires to be extinguished. The agent for the landlord stated that these incidents occurred on:

- January 18, 2017;
- June 2, 2023; and
- July 20, 2023.

Critical incident reports, an invoice from the fire department, and copies of breach letters sent to the tenant by the landlord were submitted for my consideration. The agent for the landlord also stated that on several occasions the tenant also left water running while asleep or otherwise unattended but acknowledged that no water damage has occurred as a result.

The agent for the landlord stated that due to the above incidents, the One Month Notice was posted to the tenant's door on July 21, 2023, and sent to them by registered mail that same day. The agent for the landlord provided me with the registered mail tracking number, but stated that the registered mail was returned as unclaimed.

The tenant acknowledged receipt of the One Month Notice from their door but could not recall exactly when it was received. The One Month Notice is on the Residential Tenancy Branch (Branch) form, is signed and dated July 21, 2023, has an effective date of August 31, 2023, and lists the following grounds for ending the tenancy:

- 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 of the residential property,
  - seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
  - put the landlord's property at significant risk;
- the tenant has:

- failed to comply with a material term, and
- has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

Under the details of cause section of the One Month Notice it states the following:

<b>Details of Cause(s):</b> Describe what, where and who caused the issue and include dates/times, names etc. This information is required. An arbitrator may cancel the notice if details are not provided.
<b>Details of the Event(s):</b> On several occasions the tenant has left the stove on and sinks running while not being in the unit or being unresponsive, resulting in the VFD attending the site. See attached letter dated July 21, 2023

The tenant and their advocate agreed that the alleged incidents had occurred, and that they were serious in nature. However, they argued that the tenancy should nevertheless continue as:

- the tenant's medication was making them sleepy and inattentive;
- their medication has been adjusted;
- they are doing well on their adjusted medication and are more attentive; and
- they have stopped using the stove.

The tenant and their advocate stated that because of the above, the tenant presents no further risk, and therefore the One Month Notice should be cancelled and the tenancy should continue. The agent for the landlord disagreed stating that given the nature of the building, the number of other occupants who reside there, the number of previous incidents that have already occurred and the seriousness of those incidents in terms of risk to life and property, the tenancy must end.

The parties agreed that if an order of possession was granted, November 30, 2023, would be a reasonable date. They also agreed that a place had been secured by the landlord for the tenant in supportive housing, so that the tenant would not be unhoused if the tenancy was ended because of the One Month Notice. The tenant's advocate acknowledged that the accommodation would be available for the tenant around November 15, 2023.

## Analysis

### **Should the landlords' One Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession?**

Section 47 of the Act states that a landlord may issue a Notice to End Tenancy for Cause to a tenant if the landlord has grounds to do so. Section 47(4) of the Act states that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch (Branch). If the tenant files an application to dispute the notice on time, the landlord bears the burden to prove the grounds for the One Month Notice.

The tenant disputed the One Month Notice on August 3, 2023. I am satisfied based on the affirmed testimony of the agent that the One Month Notice was posted to the door of the rental unit on July 21, 2023, and at the hearing the tenant acknowledged receiving it off their door. I therefore deem the tenant served on July 24, 2023, pursuant to sections 88(g) and 90(c) of the Act. I therefore find that the tenant applied to dispute the One Month Notice within the time frame allowed by section 47(4) of the Act. The landlord therefore has the burden to prove that they have sufficient grounds to end the tenancy via the One Month Notice.

Based on the documentary evidence before me, the testimony of the parties, and on a balance of probabilities, I find the landlord has satisfied me on a balance of probabilities that they have cause to end the tenancy under section 47 of the Act, as set out in the One Month Notice. I am satisfied that the tenant has on at least three occasions, caused fires on the stove of their rental unit, however small, which required extinguishment and the attendance of the fire department. I am satisfied that these fires caused the building fire alarms to sound, which significantly and unreasonably disturbed many other residents, as well as the agents for the landlord, and that the fires seriously jeopardized the health and safety of not only the occupants of the other 146 units, but the tenant and the agents for the landlord, and put the landlord's property at significant risk. This is unacceptable.

Although the tenant and advocate stated that the risk has been resolved, as the tenant's medication has been changed and the tenant has stopped using the stove, I am not satisfied that this is the case. The stove remains in the rental unit and is plugged in, so there is no guarantee that the tenant will not resume its use. There is also no guarantee that the change in medication has permanently resolved the tenant's struggles with attentiveness and drowsiness. The tenant also continues to use cocaine daily. As a result, I am not satisfied that the fire and flood risks have indeed been resolved, and in any event, any current resolution would not negate the landlord's right to end the tenancy under section 47 of the Act.

Given the above, and the serious risk posed to both life and property by the tenant's previous actions, I find that the landlord has grounds to end the tenancy under at least sections 47(1)(d)(i), (ii) and (iii) of the Act. I therefore dismiss the tenant's application seeking cancellation of the One Month Notice without leave to reapply.

As I am satisfied that the One Month Notice complies with section 52 of the Act, I therefore grant the landlord an Order of Possession for the rental unit under section 55(1) of the Act. Pursuant to Policy Guideline 54, sections 55(1) and 55(3) of the Act, and in accordance with the submissions of the parties, I grant the landlord an Order of Possession effective at 1:00 P.M. on November 30, 2023.

### **Are the parties entitled to recovery of their respective filing fees?**

As the tenant was unsuccessful in their claim for cancellation of the One Month Notice, I decline to grant them recovery of the filing fee.

As the landlord was successful in their claim for enforcement of the One Month Notice, I grant them recovery of their \$100.0 filing fee pursuant to section 72(1) of the Act. Pursuant to section 67 of the Act, I therefore grant them a Monetary Order for recovery of this amount.

### **Conclusion**

The tenant's Application is dismissed in its entirety without leave to reapply.

Pursuant to sections 55(1) and 55(3) of the Act, I grant an Order of Possession to the landlord effective at **1:00 P.M. on November 30, 2023, after service of this Order** on the tenant. The landlord is provided with this Order in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant fail to comply with this Order, it may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to section 57(2) of the Act, the landlord must not take actual possession of the rental unit if it is occupied and the tenant overholds the rental unit, unless the landlord has a writ of possession issued under the Supreme Court Civil Rules.

Pursuant to section 67 of the Act, I grant the landlord a Monetary Order in the amount of **\$100.00**. The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court. I lieu of enforcing the Monetary Order, the landlord may withhold this amount from any security deposit or pet damage deposit held in trust,

should they wish to do so. The balance of any deposits must then be dealt with in accordance with the Act.

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the Act.

Dated: November 15, 2023

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Residential Tenancy Branch