



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Municipal Affairs

## Introduction

This hearing dealt with the Tenant's Application under the Residential Tenancy Act for:

1. Cancellation of the Landlord's One Month Notice to End Tenancy for Cause under section 47 of the Act.

This hearing also dealt with the Landlord's cross Application under the Act for:

1. An Order of Possession for the One Month Notices under sections 47, 55 and 62 of the Act.
2. An Order to recover the filing fee from the Tenant.

Tenant JRL, witness HB and advocate JH appeared.

Agent JL appeared for the Landlord.

## Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The Tenant acknowledged receipt of the Proceeding Package and raised no concerns regarding service. I therefore find the Proceeding Package duly served in accordance with the Act, and the hearing proceeded as scheduled.

## Service of Evidence

Both parties acknowledged receipt of the documentary evidence and raised no concerns regarding service. I therefore find the documentary evidence before me duly served on each party in accordance with the Act and accepted it for consideration.

## Issues to be Decided:

Should the One Month Notice be cancelled.

If not, is the Landlord entitled to an Order of Possession.

## 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 Landlord served the Tenant on October 21, 2024 with a letter advising of breaches of the Tenancy Agreement.

The Landlord filed evidence that the One Month Notice dated October 21, 2014 was attached on the Tenant's door on October 21, 2024 and the Tenant acknowledged delivery on October 21, 2024. The move out date on the Notice is November 30, 2024.

The Tenant's Application for Dispute Resolution was filed on October 31, 2024.

The Landlord's cross Application for Dispute Resolution was filed on November 5, 2024 and served by attaching the Notice of Dispute Resolution and evidence on November 6 to the door of the Tenant's suite.

Evidence was provided showing that this tenancy began on May 1, 2024, with a monthly rent of \$975, due on 1st day of the month, with a security deposit in the amount of \$487.50.

The reasons listed in the Notice to end the tenancy are:

The Tenant has, contrary to section 47(1)(d) of the Act:

- 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 of interest of the landlord or another occupant or
- put the landlord's property at significant risk.

The breach letter dated October 21, 2024 outlines the reasons for the Notice.

In the Landlord's cross Application, the summary of reasons for the Order of Possession are:

Resident was served a caution notice in June after several complaints about the resident's drunken behavior in common areas, hostility with other residents, lewd and violent threats uttered to some, new complaints were submitted: noise complaints from neighbours, tenant is then documented smoking indoors and continuing to do so after warnings served.

Residents have submitted notices to vacate due to the tenant's disruptive behavior.

Another tenant, stated by the Landlord in oral evidence to be the tenants in the suite next to the Tenant, filed notice on October 21 to end their tenancy because of the continuing smoke affecting their health and because of disturbance of loud noises at night from the Tenant's suite. The Landlord submitted in evidence a letter from that tenant reciting the reasons for vacating their suite.

In the Tenant's Application, they admitted:

I smoked in my apartment due to being threatened by neighbors in the building. I did not feel comfortable going to smoking area in front of the building. I also have anxiety that is debilitating.

In the hearing, the Tenant confirmed that they smoked in their suite for the reasons they cited in their Application.

A clause of the Tenancy Agreement filed in evidence prohibits smoking tobacco in the suite or on the rental property without the consent of the Landlord. The Landlord gave evidence that it consented for tenants to smoke in an outdoor area of the rental building. The Landlord also gave evidence of several women in the building complaining of unwanted comments and attention by the Tenant. At the request of one of those women whose suite was on the same floor as the Tenant, she moved to a suite on another floor.

## **Analysis**

### **Should the Landlord's One Month Notice be cancelled? If not, is the Landlord 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 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. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the One Month Notice.

As the Tenant disputed this Notice on October 31, 2024, and since I have found that the One Month Notice was served to the Tenant on October 21, 2024 and received by the Tenant on the same day, I find that the Tenant has applied to dispute the One Month Notice within the time frame allowed by section 47 of the Act. I find that the Landlord has the burden to prove that they have sufficient grounds to issue the One Month Notice.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find the Landlord has proved that they have sufficient cause to issue the One Month Notice to the Tenant and obtain an end to this tenancy.

I find the Landlord has provided sufficient evidence that the Tenant significantly interfered and unreasonably disturbed another occupant of the residential property.

I find the Tenant has seriously jeopardized the health and lawful right or interest of another occupant.

I find the landlord has not provided sufficient evidence of putting the Landlord's property at significant risk.

For the above reasons, the Tenant's application for cancellation of the Landlord's One Month Notice to End Tenancy for Cause under section 47 of the Act is dismissed, without leave to reapply.

Section 55(1) of the Act states that when a tenant's application to cancel a notice to end tenancy is dismissed and the notice to end tenancy complies with the form and content requirements of section 52 of the Act, the director must issue an order of possession in favour of the landlord. As I have found that the Tenant's application to cancel the One Month Notice is dismissed and the One Month Notice complies with the form and content requirements of the Act, I grant the Landlord an order of possession which will be effective on January 31, 2025, at 1:00 pm

**Is the Landlord entitled to recover the filing fee for this cross application from the Tenant?**

As the Tenant was not successful in its application, the Landlord's application for authorization to recover the filing fee for this cross application from the Tenant under section 72 of the Act is granted.

I further order that the Landlord may deduct the filing fee from the security deposit due to the Tenant.

**Conclusion**

The Tenant's application is dismissed in its entirety, without leave to reapply.

By operation of section 55(1) of the Act, the Landlord is granted an order of possession which will be effective on January 31, 2025 at 1:00 pm. The order of possession may be filed in 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 Act.

Dated: December 30, 2024

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Residential Tenancy Branch