

DECISION

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act

It also dealt with the Landlord's Application for:

- an Order of Possession based on a One Month Notice to End Tenancy for Cause (One Month Notice) under sections 47 and 55 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

The hearing was attended by Tenant P.G. for the Tenant, and J.L. for the Landlord.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The Landlord confirmed receipt of the Proceeding Package that the Tenant put through their door and that they had enough time to review it.

Section 71 (2)(c) of the Act allows arbitrators to find a document was sufficiently served.

Due to this confirmation, I find the Proceeding Package sufficiently served under section 71 (2) of the Act.

The Tenant confirmed receipt of the Proceeding Package which was posted on the rental unit's door and that they had enough time to review it. Therefore, I find the package properly served per section 89 of the Act.

Service of Evidence

The Landlord confirmed receipt of the Tenant's evidence that was put through their door and that they had enough time to review it. Due to this confirmation, I find the Tenant's evidence sufficiently served under section 71 (2) of the Act.

The Tenant confirmed receipt of the Landlord's evidence which was posted on the rental unit's door and that they had enough time to review it. Therefore, I find that it was served per section 88 of the Act.

Preliminary Matters

The following issues are dismissed with leave to reapply:

- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act

Residential Tenancy Branch Rules of Procedure, Rule 6.2, states that if, in the course of the dispute resolution proceeding the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

Aside from the application to cancel the Notice to End Tenancy, I am exercising my discretion to dismiss these issues identified in the application with leave to reapply as these matters are not related. Leave to reapply is not an extension of any applicable time limit.

Issues to be Decided

Should the Landlord's One Month Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?

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

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.

Both parties agree the Landlord served the Tenant the One Month Notice by posting it on the Tenant's door on June 25, 2025.

Both parties provided a copy of the One Month Notice. Its effective date was July 31, 2025. The details of cause section focuses on the alleged unsanitary state of the rental unit and odours from the Tenant smoking. The selected causes are:

- Tenant or a person permitted on the property by the tenant has (check all boxes that apply):
 - 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 caused extraordinary damage to the unit/site or 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.

Both parties agree on the following:

- The residential property is an apartment building with multiple floors.
- Occupants are allowed to smoke on their balconies if they close their windows when they do so.
- There are dumpsters below the Tenant's suite where other residents often smoke.
- When the Landlord inspected the rental unit on June 5, 2025, the floor was sticky, and the bathtub was filled with dishes and pots.

The Landlord testified that the Tenant created unhygienic living conditions and violated the no-smoking clause in the tenancy agreement. They stated that cigarette smoke caused nausea in tenants across the hall and disrupted sleep for a 70-year-old neighbour due to smoke entering through ventilation. The cleaning company and maintenance staff repeatedly complained about the rental unit's condition. They cited sticky floors, the smell of cat feces, and garbage accumulation. Flies were also coming from the Tenant's rental unit.

The Tenant testified to the following:

- The Tenant argued that the Landlord overstated the rental unit's condition and smell. They stated that other visitors had not complained. They also said much of the smell came from dumpsters below the rental unit.
- The Tenant claimed the floor was only sticky during the inspection because of the cleaning solution they used the day before.
- They deny that there were more flies in their rental unit than any other.
- The Tenant stated that some staff complaints may have come from a staff member who disliked them.

The Landlord provided an inspection report dated June 16, 2025. It states that an inspection was conducted on June 5 by J.L., the Landlord's representative at the hearing. The report notes that the rental unit's floor was sticky, garbage bags were on the balcony, the litter box was unclean, and the unit smelled of cat feces and cigarette smoke. It also states that a One Month Notice would be served if the Tenant did not improve the rental unit's condition.

The Landlord provided notes and memos from the Tenant's files. These include:

- On June 3, 2025, two residents complained about cigarette smoke coming from the Tenant's floor. One reported nausea. The other reported difficulty breathing.
- On July 1, 2025, maintenance staff reported cigarette smoke coming from the Tenant's suite.

The Landlord provided an email from C.D., a representative of a cleaning company that works for the Landlord. It is dated August 2, 2025. C.D. reported that smells continued to come from the rental unit.

The Residential Tenancy Branch's (the Branch) records show the Tenant disputed the notice on July 9, 2025.

Analysis

Rule 6.6 sets the balance of probabilities as the standard of proof in disputes before the Residential Tenancy Branch. Under the balance of probabilities standard, a party proves something by showing it is more likely than not to be true.

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.

Conclusive Presumption

I find the One Month Notice was received on June 28, 2025. I base this finding on how both parties agree Landlord served the Tenant the One Month Notice by posting it on the Tenant's door on June 25, 2025. Documents served by being posted on a door are deemed received 3 days after they are sent under section 90 of the Act.

The Tenant disputed this notice on July 9, 2025. Since the Tenant received the One Month Notice on June 28, 2025, I find the Tenant has not applied to dispute the One Month Notice within the time frame allowed by section 47 of the Act.

At the hearing, the Tenant requested more time to dispute the One Month Notice. Section 66 of the Act states that the director may extend a time limit established by the Act only in exceptional circumstances. The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end tenancy beyond the effective date of the notice.

First, the One Month Notice's effective date is July 31, 2025. As the Tenant applied before that date, I find it is within my discretion to decide whether the timeline should be extended.

The Tenant testified that they received the One Month Notice and a terminal diagnosis at the same time. They argued that these events caused psychological stress, which delayed their application.

I find the Tenant applied to challenge the One Month Notice two days after the permitted timeline. Given the Tenant's distress caused by an exceptional circumstance, and that they nearly applied in time, I find I should exercise discretion to extend the timeframe.

I find that the Landlord has the burden to prove that they have sufficient grounds to issue the One Month Notice.

Is the One Month Notice Enforceable?

I find the Landlord has met their burden.

I find the Landlord's One Month Notice met all form and content requirements under section 52 of the Act. I base this on the copies of the Notice that were provided.

Jeopardized Health or Safety

I find the Landlord has proven that the Tenant jeopardized the health of the Landlord and other occupants of the residential property.

Residential Tenancy Policy Guideline 55 states:

"Jeopardized the health" may refer to situations where someone's physical or mental well-being is at serious risk. This could include significant exposure to toxic substances or unsanitary conditions, or the creation of an environment that could lead to serious illness or injury."

The Landlord argued that odours and pests coming from the rental unit created health concerns for other occupants and staff members.

The Tenant argued that the Landlord overstated the problem. They stated that part of the issue was caused by a garbage bin and smoking area below their rental unit. They also said that a member of the maintenance staff personally disliked them.

I found the Landlord's testimony about the smell to be more credible. It was more consistent with the evidence provided. Complaints from other occupants and staff support it. It matches the warning letters the Landlord submitted. It also aligns with parts of the Tenant's own testimony. The Tenant admitted to smoking, at least on the balcony. They also felt the need to do a full clean of the rental unit the day before the inspection, which left the floors sticky. This supports the existence of a problem. Therefore, I find that odours and flies often came from the rental unit.

I find the Landlord proved, on a balance of probabilities, that the rental unit's condition created serious health risks. This is based on the Landlord's testimony and reports from other occupants about health concerns. On June 3, 2025, two residents reported health issues due to odours. Residential Tenancy Policy Guideline 55 states that unsanitary environments can create serious health concerns for occupants. I find that repeated

reports of strong odours causing nausea and breathing problems are enough to prove a serious health risk.

Based on the facts, I find the One Month Notice is enforceable. The Tenant's application to cancel the Notice is dismissed without leave to reapply. The Landlord's application for an Order of Possession is granted.

Effective Date of the Order of Possession

The Order of Possession's effective date is September 30, 2025, at 1:00 pm.

I chose this effective date after weighing the interests of both parties.

I found several factors supported giving the Tenant more time. The most important was the Tenant's terminal illness. The Tenant is also not behind on rent, and the tenancy is over a year old.

If no factors supported a sooner effective date, I would have found it fair to give the Tenant more time due to their exceptional circumstances. However, the Landlord testified that the odours and sanitary issues caused problems for other residents. In addition to the disturbance, other residents reported health concerns.

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

As the Landlord was successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

As the tenancy is ending, I order the Landlord to retain \$100.00 of the Tenant's damage deposit as full repayment of this award, per section 72 of the Act.

Conclusion

I dismiss the Tenant's application to cancel the One Month Notice without leave to reapply.

I grant an Order of Possession to the Landlord **effective by 1:00 PM on September 30, 2025, after service of this Order on the Tenant(s)**. Should the Tenant(s) or anyone 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.

I grant the Landlord's application to recover the \$100.00 filing fee for this application per section 72 of the Act.

I authorize the Landlord to retain \$100.00 of the Tenant's security deposit per section 38 of the Act.

I dismiss the Tenant's application for an Order for the Landlord to comply with the Act with leave to reapply.

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: August 13, 2025

Residential Tenancy Branch