

DECISION

Introduction

This hearing dealt with the Tenants' 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) and an extension of the time limit to dispute the One Month Notice under sections 47 and 66 of the Act

And the Landlord's application for:

- An Order of Possession based on a One Month Notice to End Tenancy for Cause under sections 47 and 55 of the Act
- Authorization to recover the filing fee for this application from the Tenants under section 72 of the Act

Those listed on the cover page of this decision attended the hearing and were affirmed. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence

As both parties confirmed service of the Proceeding Package and documentary evidence, I find both parties were served with the required materials in accordance with the Act.

Issues to be Decided

Are the Tenants entitled to more time to cancel the Landlord's One Month Notice? 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 Tenants?

Background and Evidence

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

The rental unit is the upper level of a three storey house (the House). Both parties agreed that this tenancy began on February 1, 2025. The monthly rent of \$2,350.00 is due on the first day of each month. The Tenants paid a security deposit of \$1,175.00, which the Landlord continues to hold in trust.

Tenant FR (FR) testified that on July 23, 2025, the Landlord served in person to them the One Month Notice dated July 23, 2025, with the effective date of August 31, 2025. The One Month Notice indicates the following reason to end the tenancy:

- The Tenants have significantly interfered with or unreasonably disturbed another occupant or the Landlord.

The Details of Cause(s) section reads:

- Since [names redacted for privacy] moved into the Upper Suite (#1) on Feb. 1, 2025, there have been numerous complaints from the main floor tenants and other bystanders. The reports are of [name redacted for privacy] yelling, swearing, banging, or weeping on dates including Feb. 28th, March 7th, April 19th, May 19th, June 23rd, 2025. The main floor tenants have provided audio and video evidence from their deck and inside their home, as well as written documentation. Warnings were sent to the tenants as early as March 3. In person meetings and e-mail were sent back and forth to attempt resolution. On June 6th, [name redacted for privacy] sent an e-mail to me accepting responsibility for her behaviour and agreeing to seek professional help for her episodes of rage. Unfortunately, there were repeat episodes. Because I had failed to submit Form #26 and timecodes for all of the audio and video evidence, the previous dispute was dismissed. Therefore, I submit another eviction notice, effective August 31, 2025. Because I now risk losing the main floor tenants this has become urgent.

[reproduced as written]

The Landlord testified that the Tenants presented ongoing concerns with disturbances and violence since February 2025. The Landlord stated that the primary concerns were expressed by the downstairs tenants of the House.

The Landlord referred to audio recordings and video footage submitted in evidence. The Landlord stated that they received multiple complaints, as listed on the One Month Notice, of wailing, crying, banging noises, and related police reports.

The Landlord testified that in March 2025, they provided a warning letter to the Tenants and asked for the Tenants consideration on this matter. The Landlord testified that they also attempted to resolve the issue(s) with the Tenants in May 2025.

The Landlord referred to statements provided by the downstairs tenants of the House.

FR testified that all allegations against them are false and unjust. FR stated that the Landlord previously attempted to evict them, however, was unsuccessful.

FR stated that they did not file the dispute within the 10 day required time period, as experienced constant stress, PTDS health concerns, and were shocked when the Landlord served to them the One Month Notice.

FR stated that when they attempted to submit their on-line application to the Residential Tenancy Branch (RTB) they experienced a delay with the electronic system, which resulted in a one day delayed application date.

Further, FR stated that they were disturbed by the downstairs tenants on an ongoing basis. FR agreed that the Landlord gave them a warning letter in March 2025, however, stated the Landlord refused to share recordings and the details of the actual allegations or issue(s).

FR stated that in review of the recordings, they note other high pitch sounds and noises, and that such evidence does not substantiate the Landlord's position.

Tenant GD (GD) testified that they were impacted by the actions of the downstairs tenants of the House. GD stated that if and when the police attended, they assured them that there was no basis to the allegations made by the downstairs tenants of the House.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, which is more likely than not, I find the following.

Are the Tenants entitled to more time to cancel the Landlord's One Month Notice? 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 One Month Notice to end a tenancy when the landlord has cause to do so under the Act.

Section 47(4) and (5) of the Act states that a tenant who has received a notice under this section may apply to have it cancelled and that those who do not make an application for dispute resolution within 10 days after the date the tenant receives the

notice, is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

The Tenants have applied for dispute resolution requesting more time to cancel 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.

Residential Tenancy Policy Guideline 36 provides information to determine what qualifies as exceptional circumstances:

Exceptional Circumstances

The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward the said "reason" must have some persuasive evidence to support the truthfulness of what is said.

Some examples of what might not be considered "exceptional" circumstances include:

- the party who applied late for arbitration was not feeling well
- the party did not know the applicable law or procedure
- the party was not paying attention to the correct procedure
- the party changed his or her mind about filing an application for arbitration
- the party relied on incorrect information from a friend or relative

Following is an example of what could be considered "exceptional" circumstances, depending on the facts presented at the hearing:

- the party was in the hospital at all material times

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find the Tenants did not make an application under section 47(4) of the Act within 10 days of receiving the One Month Notice.

In accordance with section 47(5) of the Act, due to the failure of the Tenants to take this action within 10 days, I find the Tenants are conclusively presumed to have accepted that the tenancy ended on August 31, 2025, the effective date on the One Month Notice.

Although the Tenants applied for more time to cancel the One Month Notice, there is no evidence before me to support a valid reason for this delay. The Tenants' application

details indicated an ongoing stressful process and that they were exhausted. Further, the Tenants' application indicated that their application became late when the date changed at midnight due to site malfunctions.

Although FR testified to the same during the hearing, I find they did not provide coherent testimony about their medical conditions. FR did not present any documentation about the medical condition that prevented them from filing on time. The Tenants did not provide any evidence or reasons to explain why Tenant RS or GD did not file the application for dispute resolution, within the timeframe required by the Act.

I find the Tenants' submission as to why they could not file their application on time, neither strong nor compelling, and therefore, not exceptional. I find on a balance of probabilities the Tenants have not substantiated exceptional circumstances prevented them from applying for dispute resolution within the statutory timeline and I deny the application to extend the timeline of section 47(4) of the Act.

Lastly, in this case, the Tenants were to submit their application for dispute resolution no later than August 2, 2025. Even if I were to accept the Tenants' position regarding the one day delay in submitting their application, I find the application would still be considered late if accepted for the earlier date of August 5, 2025.

For these reasons, the Tenants' application for cancellation of the Landlord's One Month Notice and an extension of the time limit to dispute the One Month Notice under sections 47 and 66 of the Act is dismissed, without leave to reapply.

Section 55(1) of the Act states that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the Arbitrator must grant the landlord an order of possession if the notice complies with section 52 of the Act. I find that the One Month Notice complies with section 52 of the Act.

Therefore, I find that the Landlord is entitled to an Order of Possession.

I grant the effective date of October 31, 2025, upon consideration of the testimony of provided during the hearing and as per Residential Tenancy Policy Guideline 54, which provides guidance on Ending a Tenancy: Orders of Possession.

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

As the Landlord was successful in their application, I grant the Landlord the \$100.00 filing fee paid for this application under section 72 of the Act. I authorize the Landlord to deduct this amount from the security deposit, as per section 62(3) and 72(2) of the Act.

Conclusion

The Tenants' application for cancellation of the Landlord's One Month Notice and an extension of the time limit to dispute the One Month Notice under sections 47 and 66 of the Act is dismissed, without leave to reapply. The Tenants are conclusively presumed to have accepted the tenancy ended on the effective date of the One Month Notice.

I grant an Order of Possession to the Landlord **effective by 1:00 PM on October 31, 2025, after service of this Order on the Tenants**. Should the Tenants 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.

Under section 62(3) of the Act, I authorize the Landlord to deduct the \$100.00 filing fee from Tenants' security deposit. The Landlord must manage the balance of the security deposit in accordance with the Act.

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: September 25, 2025

Residential Tenancy Branch