DECISION

Introduction

In this decision the terms “Tenants”, “Landlord”, and “Rental Unit” are defined terms; definitions for the foregoing terms are provided on the cover page of this decision.

This hearing was convened under the Residential Tenancy Act (The ***Act***) in response to cross applications from the parties.

The Tenants filed their application on September 8, 2025, requesting cancellation of the Landlord's One Month Notice to End Tenancy for Cause under section 47 of the *Act*.

The Landlord filed their application on September 18, 2025, seeking the following:

- An order of possession pursuant to section 55 of the *Act*; and
- Authorization to recover their filing fee paid for this application from the Tenants, pursuant to section 72 of the *Act*.

The Tenants all attended the hearing. JZ and GS attended the hearing for the Landlord as agents.

Service of Records

- *Tenants’ Records to the Landlord*

The Tenants testified that they failed to serve their application to the Landlord, and they appeared confused about the question. I find the Tenants failed to prove they served their application to the Landlord, in accordance with section 89 of the *Act* and the applicable rules of the Residential Tenancy Branch’s (the **Branch**) *Rules of Procedure*. Rule 3.5 of the Branch’s *Rules of Procedure* states:

> If the applicant cannot demonstrate that each respondent was served as required by the *Act* and the *Rules of Procedure*, the director may adjourn the application or dismiss it with or without leave to reapply.

The Landlord’s application is in relation to the same notice to end tenancy that the Tenants are disputing in their application. As the Landlord was able to demonstrate service in accordance with Rule 3.5 of the *Rules of Procedure* (as I have outlined below), the hearing went ahead as scheduled.

The Tenants testified that they received the Landlord's eviction notice of August 27, 2025. It is my finding that the Tenants filed their application on September 8, 2025, because they paid for their application on the foregoing date. However, I can see that the Tenants submitted their application on Saturday, September 6, 2025. Rule 2.6 of the Branch's *Rules of Procedure* states that an application is "made when it has been submitted and either the fee has been paid or when the fee waiver application has been submitted to the Residential Tenancy Branch directly or through a Service BC Office".

However, I note that the Branch's *Rules of Procedure* also provides a definition for the term "Days". The foregoing term is defined as follows:

a) If the time for doing an act in relation to a Dispute Resolution proceeding falls or expires on a holiday, the time is extended to the next day that is not a holiday.
b) If the time for doing an act in a government office (such as the Residential Tenancy Branch or Service BC) falls or expires on a day when the office is not open during regular business hours, the time is extended to the next day that the office is open.

The above definition applies whether or not an act can be carried out using an online service.

As the tenth day to dispute the Landlord's eviction notice (from August 27, 2025) was Saturday, September 6, 2025, a day when the office was not open during regular business hours, and as the Tenants filed this application on the same date, but paid for their application on the "next day that the office [was] open" I find the Tenants disputed their application in accordance within the ten-day statutory timeframe established under section 47(4) of the *Act*.

Notwithstanding their failure to serve their application, the Landlord's agents attended the hearing to provide evidence about the eviction notice. I did not adjourn the matter, because a request was not made by either party and because the hearing set for the Landlord's matter dealt solely with the same eviction notice that the Tenants disputed in their application.

- *Landlord's Records to the Tenant*

The Landlord's agents provided evidence that they served the Landlord's Proceeding Package (application and evidence) to the Tenants, in person, on September 22, 2025. The Tenants acknowledged receipt of the Landlord's application and evidence, in person, pursuant to which I find the Landlord's agents served the Tenants with the Landlord's Proceeding Package in accordance with section 89(1)(a) of the *Act*.

Background Facts and Evidence

I have reviewed and considered all the oral and documentary evidence before me that met the requirements of the Branch's *Rules of Procedure*, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The parties agreed that this tenancy began in 2018 and that on August 27, 2025, the Tenants received a One Month Notice to End Tenancy for Cause, signed GS on August 27, 2025, and effective on August 27, 2025 (the **Notice**).

In the Notice, I can see the following selected grounds for why this tenancy must end:

- The Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

GS and GZ testified that:

- Terms 20 and 42 of the parties' tenancy agreement were breached by the Tenants, because the Tenants have not provided evidence of rental insurance coverage or vehicle insurance coverage for their car, parked on the grounds of the property in which the Rental Unit is in.
- On August 13, 2025, GZ attached a letter to the Rental Unit's door, which contained the following statements: "It has come to our attention that you are breaking the terms of your lease and have not given up a current copy of your tenants insurance [*sic*]. Also we have not received a copy of your vehicle insurance. We are giving you 7 days to produce a copy insurance for your vehicle [*sic*] and your tenants insurance policy or we will be issuing a one month notice to end tenancy".
- On July 6, 2025, the Tenants' cat peed on a carpeted area of the rental building's lobby.
- They believe the Tenants were responsible because they are the only tenants on the first floor that own a cat.
- On August 1, 2025, GZ attached a letter to the Rental Unit's door demanding, among other things, reimbursement for carpet cleaning fees.
- On August 4, 2025, GZ attached a second letter to the Rental Unit's door with a demand for payment.

LN testified that MM and TN are their parents and that they are 19 years old. LN testified that their parents do not understand English well and when they received GZ' letter on August 13, 2025, regarding insurance, they sent GZ correspondence asking for details, because they did not understand what GZ meant. GZ testified that they received LN's text message/email, but they ignored it, because their August 13, 2025, letter was sufficiently clear. The Tenants testified that their cat did not pee in the lobby.

Analysis

Section 47 of the *Act* states that a landlord may issue a One Month Notice to end a tenancy when the landlord <u>has cause to do so under the *Act*</u>.

Section 44.1 of the *Act* states that a landlord must not give the tenant notice to end tenancy unless, when the notice is given, in respect of the purpose set out in the notice, (a) the relevant requirements or circumstances applied, or (b) the landlord had a reasonable belief that the relevant requirements or circumstances applied.

In *Guevara v Louie*, 2020 BCSC 380 [*Guevara*], at paragraph 55, Justice Sewell states that a "review of all of the grounds on which a tenancy may be terminated under s. 47 [of the *Act*] makes it apparent that the tenant must have engaged in <u>serious misconduct</u> that seriously affected the landlord or consider the building in which the premises are located …" Justice Sewell then goes on to state that an arbitrator must give consideration to the circumstances relating to the defaults of the tenant.

In *Senft v Society For Christian Care of the Elderly*, 2022 BCSC 744, Justice Wilkinson states that arbitrators must interpret section 47 of the *Act* in a manner that is consistent with the text, context and purpose of the *Residential Tenancy Act*. At paragraph 38 of the decision, Justice Wilkinson states: "several decisions of this Court confirm that RTB arbitrators must keep the protective purpose of the *RTA* in mind when construing the meaning of a provision of the *RTA*."

I find, for the reasons that follow, the relevant circumstances neither applied nor did the landlord's agents have a reasonable belief that the relevant requirement applied.

When two parties provide equally plausible testimonies regarding the occurrence of an event, the party with the onus to prove their claim bears the onus to provide evidence above and beyond their testimony to prove the claimed occurrence. The Tenants denied that their cat was responsible for the pee incident. The Landlord's only evidence was that the Tenants are the only household on the first floor with a cat. GZ provided evidence that the stain was by the main entrance. It is unclear why an animal from another floor in the building could not have peed by the main entrance of the rental building. It is not a given that the only animal that uses the main entrance of the building is the one cat that resides on the first floor of the building. This claim was neither proven nor is it reasonable to hold such a belief.

However, even if I am wrong in my analysis above, as stated by the Court in *Guevara*, section 47 notices are not for trivial matters such as this. The submitted picture shows a small stain that was dealt with by a $131.25 carpet cleaning service. Even if the Tenants are responsible for this invoice, the Landlord's remedy is to file an application for compensation, not to issue an eviction notice for significant interference with or unreasonable disturbance of another occupant or the landlord.

The Tenants agreed that they do not have rental insurance or vehicle insurance for their parked vehicle. At the hearing I enquired why sections 20 and 42 of the parties' tenancy agreement, which the Landlord's agents identified as the breached sections of the parties' tenancy agreement are material sections. The agents appeared confused and asked for clarification. GS then explained that they are seeking an eviction because the Tenants' contraventions were "material breaches".

Section 47(1)(h) states that a landlord may end a tenancy by giving notice to end the tenancy if 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.

A breach of a non-material clause of the tenancy agreement is not sufficient to end a tenancy pursuant to section 47 of the *Act*. It is for the Landlord to prove why the alleged breaches were breaches of clauses that were material to the parties' agreement. Branch Policy Guideline eight provides the following:

> A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.
>
> To determine the materiality of a term during a dispute resolution hearing, the arbitrator will consider the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.
>
> The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution proceeding, the arbitrator will consider the true intention of the parties in determining whether or not the clause is material.

The parties did not place their initials beside the two clauses cited by the Landlord's agents. I can see at least one initial beside clause nine, however, which is with respect to late payment of rent. There is no indication or evidence before me that the parties set their minds to either clause at the start of the tenancy. In fact, clause 42, which is, in part, in relation to tenant's insurance, includes the following statement: "The tenant has a current tenants insurance and liability policy [] yes [] no". Neither box was selected by the Tenants at the start of the tenancy. If this clause was of such significance that even the most minor breaches gave the Landlord the right to end the tenancy, there is certainly no indication that the parties allocated even one second to discussing the term.

In any case, the Landlord's agents neither provided evidence that would establish the materiality of the above-cited clauses, nor was it apparent that they understand what materiality was in reference to, because GS responded with the statement that the contraventions of the Tenants were "material breaches". This statement shows a misunderstanding of section 47(1)(h) of the *Act*. Under these circumstances I find the Landlord neither proved that the relevant requirements or circumstances applied, or that the Landlord had a reasonable belief that the relevant requirements or circumstances applied.

Therefore, I find the Landlord's eviction notice does not comply with section 44.1 of the *Act* and for that reason the Notice is cancelled and is of no force or effect.

If I am wrong in the above analysis, I find the Landlord failed to meet their burden to establish that they had cause to give the Notice pursuant to section 47 of the *Act*, because neither of the grounds on page two of the Notice were proven.

Finally, the Notice includes a wholly incorrect effective date. I have not considered the Notice's incorrect effective date, because incorrect effective dates on notices to end tenancy are automatically changed pursuant to section 53 of the *Act*. This would not be a ground to cancel the Notice.

Conclusion

The Landlord's Notice dated August 27, 2025, is cancelled and is of no force or effect, because the Landlord did not prove that they had cause to issue the Notice under section 47 of the *Act* or 44.1 of the *Act*. The Landlord's application is dismissed in full, without leave to reapply. This tenancy continues until it is ended 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: October 9, 2025

Residential Tenancy Branch