



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC

### Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”).

I note that Section 55 of the *Act* requires that when a tenant submits an Application seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with Section 52 of the *Act*.

The hearing was convened by telephone conference call and was attended by the Tenant, the Tenant’s advocate (the “Advocate”), the agent for the Landlord (the “Agent”) and two witnesses for the Landlord. All parties attended at the appointed time, ready to proceed and provided affirmed testimony. The parties were given the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The witnesses were excluded from the hearing until called upon to provide testimony.

At the request of the Agent, a copy of the decision and copies of any resulting Order of Possession will be sent to Agent at the e-mail address provided in the hearing. At the request of the Tenant, a copy of the decision will be mailed to them at their address as shown on the Application. A copy will also be e-mail to the Advocate at the e-mail address provided in the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision.

Preliminary Matters

**Res Judicata**

At the outset of the hearing the Tenant and the Advocate stated that the legal principle of *res judicata* applies to this matter as the Landlord was previously unsuccessful in seeking to end the tenancy early based on the same reasons for which the One Month Notice which is the subject of this dispute was issued. The Advocate stated that a decision with regards to these issues had already been rendered, a copy of which was submitted for my consideration, and therefore the One Month Notice should be unenforceable as the Landlord should not be provided with an opportunity to rehabilitate their claim in order to end the tenancy.

Res judicata is a rule in law that a final decision, determined by an Officer with proper jurisdiction and made on the merits of the claim, is conclusive as to the rights of the parties and constitutes an absolute bar to a subsequent Application involving the same claim.

With respect to res judicata, the courts have found that:

“...the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time.”

Mr. Justice Hall of the Supreme Court of British Columbia, in the case *Leonard Alfred Gamache and Vey Gamache v. Mark Megyesi and Century 21 Bob Sutton Realty Ltd.*, Prince George Registry, Docket No. 28394 dated 15 November, 1996, quoted with approval the above passage from the judgement of *Henderson v. Henderson*, (1843), 67 E.R. 313.

I am aware of the principle of *res judicata* and have read the previous decision submitted by the Tenant. Although the grounds cited by the Landlord in their application

to end the tenancy early may have been the same as the reasons cited for ending the tenancy on the One Month Notice, for the following reasons I find that the principle of *res judicata* does not apply. The decision to which the Tenant and Advocate refer relates to a different section of the *Act* than this Application. In that case, the Landlords applied to end the tenancy early under section 59 of the *Act*. In this case the Tenant has applied to cancel a One Month Notice issued pursuant to section 47 of the *Act*. As a result, I do not find that this matter is a subsequent Application involving the same claim. Further to this, the decision maker in the previous matter made no finding of fact or law in relation to the One Month Notice which is the subject of this dispute. As a result, I find that a final decision has not been previously rendered regarding this matter and therefore there is no bar to this Application.

### **Notice to End Tenancy**

A copy of the One Month Notice was not in the documentary evidence before me at the time of the hearing; however, I accepted testimony from the Landlord regarding the form and content of the One Month Notice and I advised the parties that they had until 4:00 P.M. on the date of the hearing to submit a true copy of the One Month Notice to the Residential Tenancy Branch (the "Branch") or I would render my decision without consideration of it. A copy of the One Month Notice was received in accordance with the timeline noted above, which matched the testimony provided by the Landlord in the hearing. As a result, I have considered the One Month Notice in this decision.

### Issue(s) to be Decided

Is there a valid reason to cancel the One Month Notice under the *Act*?

If the Tenant is not successful in seeking to have the One Month Notice cancelled, is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

### Background and Evidence

The parties agreed that the tenancy began some years prior and that the Tenant currently pays \$414.00 per month in rent, on a month-to-month basis.

Although significant testimony was provided by both parties regarding whether or not a One Month Notice had been served on the Tenant, ultimately the Tenant agreed that they had received a One Month Notice, in their name, and in relation to their rental unit. The Agent testified that this One Month Notice was personally served on the Tenant on

September 5, 2017, and a witness, D.S., provided affirmed testimony confirming this service. Although the Tenant acknowledged receiving the One Month Notice, they could not confirm the date upon which it was received.

The One Month Notice in the documentary evidence before me, which is dated September 5, 2017, has an effective date of September 18, 2017, and states that the One Month notice was personally served on the Tenant on September 5, 2017. The One Month Notice gives the following reasons 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;
- The tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
- The tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk;
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property; and
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord.

The Agent and the witnesses provided testimony in relation to threats uttered by the Tenant to either the witnesses themselves or other occupants of the building. The Agent and the witnesses also provided testimony regarding physical altercations between the Tenant and other occupants of the building, including one of the witnesses. Although the Tenant denied most of the testimony provided by the Agent and the witnesses, they did admit to “snapping” at another occupant of the building during an incident where one of the witnesses was present. The Tenant testified that they did not intend to have an altercation with the other occupant, however, the other occupant was in the hallway and was in their face and they simply snapped and yelled at them.

The Agent submitted a copy of a letter written by them and addressed to the Tenant, which is dated September 6, 2017. The letter states that after receiving the One Month Notice, the Tenant physically attacked the live-in building manager and that the police were called. The letter also states that the Tenant has physically assaulted the live-in building manager on one previous occasion, has disturbed other occupants of the

building by being drunk and disorderly, has attacked other occupants of the building, and has verbally assaulted the Agent.

In the hearing the Agent testified that the Tenant has attacked several occupants of the building, including the live-in manager, and uttered threats to other occupants or their guests. The Agent also testified that the Tenant has brought other people onto the property who have been violent or uttered threats. The Agent stated that although the Tenant has not been convicted and no charges have been filed, the police have been involved in a number of incidents on the property, for which the Tenant is responsible.

The Landlord called the witness E.N. during the hearing who testified that on one occasion they approached the Tenant about a noise complaint and that during this interaction the Tenant threatened to “knock out” another occupant of the building who was also present. E.N. testified that they have received complaints from other occupants of the building regarding the violent and threatening behaviour of the Tenant, that they witnessed the Tenant threaten a security guard on the property, and that they have personally been threatened by the Tenant.

The Landlord called a second witness, D.S., who stated that their previous spouse was threatened by the Tenant and that during that interaction, the Tenant both threatened to harm their spouse and to bring their brother onto the property to harm their spouse. D.S. testified that both the security guard for the property and the police were called to intervene.

The Tenant testified that the testimony of the Agent and witnesses is not accurate and denied that they had engaged in violent or threatening behavior. The Tenant testified that it was actually D.S.’s spouse who was violent and threatening and that she had started the incident to which D.S. referred. With regards to the incident involving E.N. and another occupant of the building, the Tenant stated that although they did not intend to have an altercation, the other occupant was in their face and they simply “snapped” and yelled at them.

The Tenant testified that many occupants of the building are loud and disruptive and that it is the other occupants of the building who have unreasonably disturbed him, not the other way around. The Advocate also stated that the Agent could not have believed that the risk of harm posed to the Landlord or other occupants of the building by the Tenant was significant as instead of perusing charges, they chose to seek resolution through the Branch. As a result, the Advocate stated that the tenancy should not end.

### Analysis

Although the Tenant could not confirm in the hearing the exact date upon which they received the One Month Notice, the Landlord testified that it was personally served on them on September 5, 2017. The Landlord also called a witness during the hearing who testified that they were present with the Landlord when the One Month notice was personally served on the Tenant on September 5, 2017. Based on the affirmed testimony of the Landlord and witness, and in accordance with section 88 of the *Act*, I find on a balance of probabilities that the Tenant was personally served with the One Month Notice on September 5, 2017.

Although the Tenant denied engaging in most of the activity alleged by the Agent and witnesses, they did not provide any documentary evidence or call any witnesses to corroborate this testimony. In addition to this, the Tenant admitted to being involved in at least two incidents with other occupants of the building. During one such incident, the Tenant admitted to snapping and yelling at the other occupant, which is consistent with the witness testimony provided by E.N. Based on the above, I find the evidence and testimony of the Agent and witnesses more reliable than the unsupported testimony of the Applicant. As a result, I find on a balance of probabilities that the Landlord had sufficient cause pursuant to Section 47 of the *Act* to end the tenancy because the Tenant or a person permitted on the property by the Tenant has seriously jeopardized the health or safety or lawful right of another occupant or the Landlord. As a result, the Tenant's Application to cancel the One Month Notice is dismissed.

As the Tenant's Application is dismissed, I am required under section 55 of the *Act* to grant the Landlord an Order of Possession if the One Month Notice complies with section 52 of the *Act* which states:

**52** In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
  - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement

made in accordance with section 45.2 [*confirmation of eligibility*], and

(e) when given by a landlord, be in the approved form.

As the One Month Notice issued by the Landlord is signed and dated by the Landlord, gives the address of the rental unit, states the effective date of the notice, states the grounds for ending the tenancy, and is in the approved form, I find that it complies with section 52 of the *Act*. As a result, the Landlord is entitled to an Order of Possession. As the effective date of the One Month Notice has passed and both parties agreed that rent for November 2017, was paid, the Order of Possession will be effective 1:00 P.M. on November 30, 2017.

Although testimony was provided by both parties in the hearing regarding the other reasons for which the One Month Notice was issued, as I have already found above that the Tenancy is ended, I have not made any findings of fact or law in relation to these matters.

### Conclusion

The Tenant's Application is dismissed without leave to reapply and pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlords effective **1:00 P.M on November 30, 2017, 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, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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

Dated: November 17, 2017

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Residential Tenancy Branch