



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute codes      CNC OLC

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of a One Month Notice to End Tenancy For Cause, pursuant to section 47 (the One Month Notice);
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. No issues were raised with respect to the service of the application and evidence on file.

The tenant's application was filed within the time period required under the Act.

### Issues

Does this tenancy fall under the jurisdiction of the Act?

If yes, should the landlord's One Month Notice be cancelled or is the landlord entitled to an order of possession?

### Background and Evidence

While I have turned my mind to all of the documentary evidence and the testimony of the parties, only the relevant details of their respective submissions and arguments are reproduced here.

The tenancy began on June 1, 2017. The rental unit which is under supportive housing is a one bedroom apartment. The parties entered into an "occupancy agreement" which stipulates that the Residential Tenancy Act does not apply.

The landlord argues that despite the above stipulation in the “occupancy agreement”, this tenancy falls under the jurisdiction of the Act. The landlord argues that they provide supportive housing which includes meals and housekeeping services but they do not provide personal care for the residents.

The landlord initially served the tenant with just a letter of eviction which they later rectified by issuing a formal notice under the Act. The landlord served the tenant with a One Month Notice on August 21, 2018 with an effective date of September 21, 2018. The landlord argues the One Month Notice should be upheld on the grounds that the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord and seriously jeopardize the health and safety or lawful right of another occupant or landlord.

The landlord submitted evidence in the form of various staff communication notes, employee incident reports, letter of warning to the tenant, letter of eviction to the tenant, signed occupancy agreement, a copy of the landlords bullying and harassment policy and a Worker’s Compensation Act policy on bullying and harassment.

The landlord submits that the tenant has a history of inappropriate behavior including sexual harassment for which he has received a warning letter in the past. The landlord submits that this behavior has been escalating.

The landlord submitted various communication notes from staff in which staff document incidents with the tenant which included the tenant watching pornography while staff attended to his unit, not being fully dressed, the tenant inviting staff to watch pornography with him and the tenant attempting to have a staff member touch his private area.

The landlord submitted a warning letter issued to the tenant on July 18, 2017 a copy of which was provided to the landlord’s daughter along with the landlord’s expectations. The tenant was warned that his tenancy would be terminated if the behavior continued.

Following this warning letter, the landlord submits two employee incident reports dated July 3, 2018 and July 5, 2018. The first was in regards to an incident reported by a staff by which the tenant allegedly grabbed and pulled the staff members hand towards his private area after telling her how much he liked her cleaning. The staff member pulled her hand away and told the tenant his behavior was not appropriate. The report indicates that when the staff member later returned to drop off laundry, the tenant again

asked for her hand. The second incident was in regards to inappropriate comment made by the tenant to a staff member when she knocked on his door to ask him to come down for dinner. The tenant's comment was in reference to a lewd sexual act he was performing on himself.

After the above two incidents, the staff were instructed to not attend to the tenant alone and the tenant was served with the letter of eviction which was later replaced by the formal One Month Notice.

The tenant's son represented the tenant in this hearing. He argues that the "occupancy agreement" is very clear in stipulating that the Act does not apply. He submits that the landlord has the same agreement with the other 60 residents. The landlord initially served the tenant with an eviction letter rather than a proper One Month Notice which supports the landlord was not operating under the Act.

The tenant's son submits that he went over the reported incidents with his father but he has virtually no recollection of the incidents. The tenant's son argues that names of staff members are vetted from the documents submitted by the landlord and the documents are very brief in context which makes them difficult to respond to. He also argues that many of the documented incidents do not appear to be formal complaints but rather just log book entries by staff.

With respect to the allegation of watching pornography, the tenant's son argues that this occurred in the tenant's own private suite and there were no concerns that the pornography itself was of an inappropriate or illegal nature. The tenant's son submits that his father does not recall asking a staff member to watch pornography with him but he did say that it might have happened but it was not intended to bully or harass anyone. The tenant's son acknowledged that his father was not always appropriately dressed and that he used to always be naked inside his suite but never in the hallways. Staff would knock on his suite door and he would let them in. This issue has been since addressed and he now wears shorts when staff attends to his room.

With respect to the July 3, 2018 incident of inappropriate touching, the tenant's son points out that this is the first time a formal complaint was documented. The tenant's son submits that his father does not recall this incident. The complaint does not identify the staff member and there is very little detail provided. The tenant's son submits that his father could have been grabbing the staff member's hand in the context of liking her cleaning.

With respect to the July 5, 2018 incident of the inappropriate comments, the tenant's son submits that the tenant acknowledged that he could have possibly made the comments. The tenant's son submits that his father was in his suite and was interrupted by knocking on the door and just blurted out the comment out of anger.

### Analysis

As per section 2 of the Act, the Act applies to **tenancy agreements**, rental units and other residential property.

A tenancy agreement is defined under section 1 of the Act as follows:

***"tenancy agreement"** means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;*

Landlord and Tenant are defined under section 1 of the Act as follows:

***"landlord"**, in relation to a rental unit, includes any of the following:*

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
  - (i) permits occupation of the rental unit under a tenancy agreement, or*
  - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;**
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);*
- (c) a person, other than a tenant occupying the rental unit, who
  - (i) is entitled to possession of the rental unit, and*
  - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;**
- (d) a former landlord, when the context requires this;*

***"tenant"** includes*

- (a) the estate of a deceased tenant, and*
- (b) when the context requires, a former or prospective tenant.*

Section 4(g) of the Act provides a list of the types of living accommodations that the Act does not apply to which include the following:

- (i) in a community care facility under the *Community Care and Assisted Living Act*,
- (ii) in a continuing care facility under the *Continuing Care Act*,
- (iii) in a public or private hospital under the *Hospital Act*,
- (iv) if designated under the *Mental Health Act*, in a Provincial mental health facility, an observation unit or a psychiatric unit,
- (v) in a housing based health facility that provides hospitality support services and personal health care, or
- (vi) that is made available in the course of providing rehabilitative or therapeutic treatment or services,

As per section 5 of the Act, landlords and tenants may not avoid or contract out of the Act or the Regulations and any attempt to avoid or contract out of the Act or the Regulations is of no effect.

The tenant's son argues that the Act should not apply to this agreement as the "occupancy agreement" specifically stipulates that it does not apply. The tenant's son however did not provide any other evidence as to whether or how this tenancy fell under one of the types of living accommodations excluded under section 4(g) of the Act.

I find the "occupancy agreement" entered into by the parties has all of the hallmarks of a tenancy agreement as defined under the Act and the relationship between the parties is one of a landlord and tenant as defined under the Act. As such, I find this tenancy falls under the jurisdiction of the Act.

Section 47 of the Act contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 47(4) of the Act, a tenant may dispute a One Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the One Month Notice.

While the tenant's son disputed some of the allegations made by the landlord, he acknowledged some and attempted to provide an explanation for some. I find the tenant's sons explanation that his father could not recall some of the alleged incidents

as they lacked detail to be inadequate. The tenant who would have had first-hand knowledge of the alleged incidents did not participate or provide any statement or testimony for this hearing so he could not be questioned with respect to any of the alleged incidents. In the absence of the tenant's testimony, I find the best available evidence was the incident reports submitted by the landlord. Had the tenant participated in the hearing, he could have denied the allegations made by the landlord, answered any questions posed to him during the hearing and in turn questioned the reliability and credibility of the landlord's incident reports.

In respect to the incidents of the tenant watching pornography, inviting staff to watch pornography and answering the door naked, I find these are examples of conduct or comments by a person towards a worker which a reasonable person ought to have known would cause that worker to be humiliated or intimidated. I find these incidents fall under the context of bullying and harassment as defined in the Landlord's Residence Bullying and Harassment Policy Statement as well as the Workers Compensation Act policy on the same. The tenant's son's argument that the tenant was only watching porn or was only naked in the confines of his own room is not acceptable. Given that part of this tenancy agreement is that the landlord provides weekly housekeeping and laundry services, which requires staff to enter the tenant's private residence, I find that the tenant's conduct ought to be held to a higher standard during this time as compared to during his own private time.

I also accept the evidence of the landlord in respect to the incident of the tenant attempting to pull a staff member's hand towards his private area. The tenant's son submitted that his father did not recall this incident but stated that it could have happened but argued that it was not in the context of bullying or harassment. I find that given the history of incidents and complaints against the tenant, it is not likely that he was only attempting to show his appreciation for the staff member's cleaning work. Again, I find this conduct to be harassment contrary to the landlord's and Workers Compensation Act policy.

I find the tenant was put on notice that his behavior was not acceptable and that his tenancy would be terminated if it did not improve.

I find that the evidence submitted by the landlord supports the issuance of the One Month Notice on the grounds that the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord and seriously jeopardize the health and safety or lawful right of another occupant or landlord. In violating the bullying and harassment policy, the tenant's conduct has significantly interfered with the landlord's

responsibility to provide a safe workplace for its staff and seriously jeopardized the health and safety of the landlord's staff in carrying out their duties.

The tenant's application to cancel the One Month Notice is dismissed and the landlord is entitled to an Order of Possession pursuant to section 55 of the Act.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) fail to comply with this Order, this Order may be filed 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 *Residential Tenancy Act*.

Dated: November 23, 2018

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Residential Tenancy Branch