



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, FFT

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a One Month Notice to End Tenancy for Cause dated January 24, 2020 ("One Month Notice"), and to recover the \$100.00 cost of his Application filing fee.

The Landlords, D.L. and H.F., appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant. The teleconference phone line remained open for over 20 minutes and was monitored throughout this time. The only persons to call into the hearing were the Landlords, who indicated that they were ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only persons on the call, besides me, were the Landlords.

The Tenant was provided with a copy of the Notice of a Dispute Resolution Hearing on January 31, 2020; however, the Tenant did not attend the teleconference hearing scheduled for April 3, 2020 at 11:00 a.m. (Pacific Time). The only persons to call into the hearing besides me were the respondent Landlords.

Rule 7.1 of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules") states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. The Respondent Landlords and I attended the hearing on time and were ready to proceed, and there was no evidence before me that the Parties had agreed to reschedule or adjourn the matter; accordingly, I commenced the hearing at 11:00 a.m. on April 3, 2020, as scheduled.

Rule 7.3 states that if a party or their agent fails to attend the hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application, with or without leave to reapply. The teleconference line remained open for minutes, however, neither the Applicant nor an agent acting on his behalf attended to provide any evidence or testimony for my consideration. As a result, and pursuant to

Rule 7.3, I **dismiss the Tenant's Application without leave to reapply.**

When a tenant applies to cancel an eviction notice, I must consider whether the respondent landlord is entitled to an order of possession; therefore, I considered the evidence of the Landlords in the case before me.

During the hearing the Landlords were given the opportunity to provide their evidence orally and respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the RTB Rules; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Preliminary and Procedural Matters

The Tenant provided his email address in his Application, and the Landlords provided their email address at the outset of the hearing. The Landlords confirmed their understanding that the Decision would be emailed to both Parties and any orders sent to the appropriate Party.

### Issue(s) to be Decided

- Are the Landlords entitled to an Order of Possession?

### Background and Evidence

The Landlords submitted a tenancy agreement that pre-dated their purchase of the residential property, but which they assumed as the new Landlords. The tenancy agreement indicates that the periodic tenancy began on November 1, 2011, with a monthly rent of \$675.00, due on the first day of each month. The tenancy agreement indicates that the Tenant paid the original landlord a security deposit of \$340.00, and no pet damage deposit.

The Landlords issued the Tenant a One Month Notice that was signed and dated January 24, 2020, had the rental unit address, and was served in person on January 24, 2020, with an effective vacancy date of February 29, 2020. The One Month Notice set out the grounds for the eviction as:

- The Tenant or a person permitted on the property by the Tenant has

- significantly interfered with or unreasonably disturbed another occupant or the landlord;
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and
- put the Landlord's property at significant risk.

The Landlords' written submission dated February 9, 2020, includes:

I issued the eviction notice to [the Tenant] based on the tenancy rules as specified in the form RTB33. '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, put the Landlord's property at significant risk.'

The notice is given in response to his repeated mis-use of the fire alarm during his 5 years as my tenant, from March 2015 to February 2020. [The Tenant] has repeatedly caused the fire alarm to sound at unreasonable times, often early in the hours from 5 am-6am. I have repeatedly requested [the Tenant] to be careful when cooking, use the fume hood, open the window and open the door. During 2019, he has caused the alarm to sound 6 times in the course of 10 months that he stayed in the suite. For 2 months, he was away on vacation during October and November 2019. Of the 6 times he rang the fire bell, 4 of them were early hours at 6:00 to 6:30am. There has been numerous number of time he has triggered the fire alarm from 2015 to 2020, so many times I have lost count.

...

[reproduced per original]

The Landlords submitted a letter and text messages from former tenants, in which the former tenants confirmed that fire alarms repeatedly went off in the Tenant's rental unit during their tenancies. In her letter to the Landlords dated February 2, 2020, former tenant, M.C., gave the Landlords notice of the end of her tenancy, which included the following:

It is with a sad heart that I give you my notice to end my tenancy at your place. The reason is that the entire time I rented your basement, I always felt I had to be on my feet, especially during the early hours of the morning because the fire alarm kept sounding off.

. . . I thought this was just a one-off thing. But guess what, it happened again and again! I'm now at a point where I can't take it anymore especially after a fire

broke out last January 1, 2020 in our neighborhood, one house away to be exact! I noted that it was my next door neighbor who's responsible for it. You have given him several warnings and letters and so on but he's still doing it! It's over a year now and too much time has passed.

You are a good landlord and I'm wishing my new landlord is like you....

I wish you good luck and I hope your new tenant is more tolerant of the fire alarm going off early in the morning.

. . .

M.C. signed the letter and provided her cell and work telephone numbers and her email address.

The Landlords submitted a text message discussion they had with another former tenant, R.C., as follows:

Hi [R.C.], I am sorry to contact you all of a sudden.

My other tenant [the Tenant] has been hitting the fire alarm again and I am trying to evict him. As you can remember, he did that on numerous occasions during your stay.

I was wondering if you can please confirm in writing that this has happened so I can justify my case.

(if you remember me, [D.], your ex-land lord from [street number])

Hi [D.], yeah I don't remember much but I do remember the fire alarm being set off (not by myself) a number of times. One occasion was early in the morning (before 9am) and a couple times I remember being woken up in day time when I was working night shifts. Hope that helps

In the hearing, the Landlord, D.L., said:

In the five years we've owned the house, he's rang fire alarm at all hours. We've given him numerous notices, knocked on his door, given a warning note when the other tenant left because of him. Every time we've given a warning, he's never acknowledged what he's done or apologized or committed to doing better. Two houses down, there was a fire alarm from their tenant. The fire department came. It is a serious matter.

I've reminded him again and again, and all I get from him is 'a lentil fell onto the burner' or 'overflow' . . . excuses. I've told him to please open the door and

window. He just says it's cold out here. I've said to be careful and reminded him so many times. The last event in January, it happened at 6 in the morning. Enough is enough. The interruption of sleep is the equivalent to drunk driving. We've pursued every avenue. The RTB recommended sitting down with him to discuss it, which we did. I've checked the fire alarm – it was new a year ago. I bought and used a smoke alarm test kit and I tested the smoke detectors in both suites. They both had similar performances, which leads me to conclude that alarm is working fine.

Over time, he's been rude and not acknowledging this as a problem. He doesn't think anything of this warning. We've given him every privilege and never acknowledged any concessions or any attempt to talk to him.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In this case, the Landlord has the burden of proof to establish that the eviction is valid.

Section 56 of the Act establishes grounds on which a landlord may apply for dispute resolution to request an early termination of a tenancy and order of possession. In order to grant such an order, I need to be satisfied that the Tenant has done any of the following:

1. significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
2. seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
3. put the landlord's property at significant risk;
4. 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;
5. has engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; or

6. caused extraordinary damage to the residential property, **and**

It would be unreasonable, or unfair to the landlord, the tenant or other occupants of the residential property to wait for a notice to end tenancy under section 47 to take effect.

Based on the evidence before me, overall, I am satisfied that the Landlord has established on a balance of probabilities that the Tenant has done the first three actions noted above. I further find that because it involves the risk of fire and because the Tenant has shown no acknowledgement of the inherent danger of his actions that it would be unreasonable and unfair for the Landlord to wait for a one month notice to end tenancy to take effect before granting an order of possession.

Accordingly, and pursuant to subsections 56(2)(a)(i)(ii)(iii), and 56(2)(b) of the Act, I find that the Landlord is entitled to an order of possession. I also make this finding pursuant to section 4(1)(a) of *Ministerial Order M089* issued March 30, 2020 pursuant to the State of Emergency declared on March 18, 2020.

I find that the One Month Notice is consistent with section 52 of the Act, as to form and content. Based on the undisputed evidence before me overall, I dismiss the Tenant's Application wholly without leave to reapply. I order that the tenancy is ended two days from the date on which the Order of Possession is served on the Tenant. I grant the Landlord an Order of Possession on the above terms.

### Conclusion

The Tenant is unsuccessful in this Application. I find that with the Landlords' undisputed evidence, they have established on a balance of probabilities that the Tenant significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, seriously jeopardized the health or safety or lawful right of another occupant or the landlord, and put the landlord's property at significant risk with his actions.

Accordingly, and pursuant to section 56 of the Act and section 4(1)(a) of *Ministerial Order M089*, I grant the Landlord an Order of Possession, which must be served on the Tenant, and which is effective two days from the date of service on the Tenant.

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 final and binding on the Parties, unless otherwise provided under the Act, and 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: April 03, 2020

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Residential Tenancy Branch