



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes:** CNC FFT OLC

### Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

MF ('landlord') represented the landlord in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The landlord confirmed receipt of the tenants' dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the Application. All parties confirmed receipt of each other's evidentiary materials and that they were ready to proceed.

The tenants confirmed receipt of the 1 Month Notice dated April 12, 2021. Accordingly, I find that the 1 Month Notice was served to the tenants in accordance with section 88 of the *Act*. As neither party had uploaded a copy in their evidentiary materials, a copy of the 1 Month Notice was uploaded by the landlord during the hearing with consent of both parties. The contents of the 1 Month Notice was confirmed during the hearing with both parties.

## **Issues**

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Are the tenants entitled to an order requiring the landlord to comply with the Act, regulation or tenancy agreement?

Are the tenants entitled to recover the filing fee for this application?

## **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on July 1, 2018. Monthly rent is currently set at \$700.00, payable on the first of the month. The landlord collected a security deposit in the amount of \$350.00, which the landlord still holds.

On April 12, 2021, the tenants were served with a 1 Month Notice to End Tenancy for the following reasons:

1. The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
2. 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.

The landlord provided the following reasons for why they are seeking an end of this tenancy. MF is the onsite manager caretaker for the complex where the tenants reside. An incident took place on or about April 10, 2021, which resulted in physical harm to MF. MF testified that the tenant LT had forced their way into MF's home, causing the door to swing open with such force that the deadbolt impacted MF's left hand. MF testified that the injury was so serious that MF had to visit emergency, and was left in a cast for almost a month.

MF testified that earlier the tenants were removing personal items that belonged to other residents from the common areas of the complex, and MF had instructed the tenants to "please do not touch things that do not belong to you". MF testified that the

tenants became angry, and the female tenant proceeded to follow MF to his home where the incident took place.

MF submitted photos of his injury, and provided witness statements and the police file numbers related to the incident. MF acknowledges that the injury may have been accidental, but the tenant had intentionally tried to enter his home, causing the injury to his hand as he tried to prevent the tenant from entering. MF testified that no charges were laid in relation to the incident, but is seeking an end of this tenancy due to the significance disturbance caused by the tenants.

The tenants are disputing the 1 Month Notice stating that they were provoked by MF. The tenants testified that they have not been charged with a criminal offence related to the incident, and that the MF had filmed them and threatened to evict them prior the incident. The tenants testified MF had shouted at them on that day, and that they had been provoked.

The tenants submit that there was a constant obstruction of clutter in front of their unit, which was not being cleaned up. The tenants submitted a written statement stating that "we knew that they weren't going to take the responsibility of keeping the area tidy so we volunteered ourselves in this task". When told not to touch these items, the tenant responded that they were "just helping out". The tenants state that they "were placing toys, pieces of wood etc. in front of the manager's unit, trying to at least keep some order", and the manager began filming them "saying he was 'collecting evidence'" and that they were 'going to be evicted'. The tenants state that they felt threatened and unjustly provoked. The tenants submitted photos of the items and pathway in their evidentiary materials.

The tenant LT testified in the hearing that she had went to the MF's door to speak to him and ask that he clean the pathway and area in front of their rental unit. LT testified that MF slammed the door in LT's face, and LT was in shock as MF told her to leave him alone. LT testified that she had merely turned the doorknob, and did not push MF.

The tenants testified that MF failed to assist with the cleaning of the complex, and the clutter would remain there for days. The tenants testified that they had to take it upon themselves to pick up the clutter, and move the items after having to wait for several days with no action.

The tenants also filed an application for the landlord to comply with the *Act*, and noted several issues they wished to have resolved, including "no loud music after 11:00 p.m." ,

“open communication on cell phone (number was blocked”, “keep common area in front of unit clean”, “no riding bicycles, tricycles...at front of townhouse sections”, “no rubbish..shall be placed..front door, sidewalks must be free of objects”, “laundry equipment may only be used at the time posted”, and “no late night marijuana smell coming through bedroom walls of manager unit”. MF responded to each individual issue in the landlord’s evidentiary materials.

### **Analysis**

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. As the tenants filed their application disputing the 1 Month Notice within the required time limit, and having issued a notice to end this tenancy, the landlord has the burden of proving that they have cause to end the tenancy on the grounds provided on the 1 Month Notice.

I have considered the submissions and evidence of both parties. In light of the evidence before me, I find it undisputed that the MF, who is the caretaker for the complex, was injured during an incident that took place inside his home. Although the resulting injury was perhaps unintentional, the tenant LT admitted to turning MF’s doorknob in an attempt to speak to MF about the preceding situation, which led to the door hitting MF’s hand as he tried to prevent MF from entering his home. Following this incident MF was unable to work for several weeks.

The tenants described the situation which preceded this incident, which they described as them “volunteering” to clean up items they described cluttering the area in front of their home. The tenants testified that not only did MF not assist in cleaning up these items, MF further provoked them when they tried to clean up the items themselves by filming them, yelling at them, and by threatening eviction.

While the tenants have not been charged with any criminal offence in relation to this matter, the landlord is not seeking an end of this tenancy for illegal activity. Rather, the landlord is alleging that the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord; and that they have seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

In this case I am satisfied that the landlord had provided sufficient evidence for me to conclude that the tenants have significantly interfered with and unreasonably disturbed other occupants and the landlord, and I find that their behaviour and actions justify the ending of this tenancy. Although the tenants testify that their actions were provoked, I

am not satisfied that they were put in a position by the landlord or other tenants where they had no other options than to act in the manner that they did. In regard to the clutter described by the tenants, and as shown in the photographs, the tenants decided to take it upon themselves to touch and remove items that did not belong to them. Although understandably upset or frustrated, the tenants had the option to file an application for dispute resolution in the event that the landlord failed to address the outstanding issue. Based on the list of grievances referenced in the tenants' application, the tenants were clearly unhappy with the numerous issues that they felt were not addressed during this tenancy.

I do not find the tenants' actions to be justified. Although the tenants testified that they felt provoked, I do not find that LT had the right to attempt to enter MF's home, or turn MF's doorknob no matter how upset LT was. I find that LT made the decision to do so, which resulted in an accident that caused significant harm and injury to MF. As stated above, regardless of whether criminal charges were laid in relation to this matter, the question is whether the tenants' actions were significant enough to justify the end of the tenancy on the grounds provided on the 1 Month Notice. Although I sympathize with the tenants that there were issues with this tenancy which did not meet their expectations, and although their intent may not have been to cause serious harm, I find that their actions have caused a significant and unreasonable disturbance to the landlord and other occupants in the complex. Accordingly, I dismiss the tenants' application to cancel the 1 Month Notice dated April 12, 2021.

**Section 55(1)** of the *Act* reads as follows:

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
  - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that the landlord's 1 Month Notice complies with section 52 of the *Act*, which states that the Notice 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, and (e) when given by a landlord, be in the approved form.

Based on my decision to dismiss the tenants' application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the effective date of the 1 Month Notice, May 31, 2021. As the tenants have not moved out, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenants. If the tenants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

The tenants also applied for an order for the landlord to comply with the *Act*. I find that the landlord had sufficiently addressed each item noted in the tenants' application, and I am not satisfied that the tenants had provided sufficient evidence to support that the landlord has failed to comply with the *Act*. Accordingly this portion of their application is dismissed without leave to reapply.

As the tenants were not successful with this application, their application to recover the filing fee is also dismissed without leave to reapply.

### **Conclusion**

I dismiss the tenants' application entire application without leave to reapply. I find that the landlord's 1 Month Notice is valid and effective as of May 31, 2021.

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: August 26, 2021

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Residential Tenancy Branch