



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, MNDCT, OLC, FFT

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a tenancy. On November 28, 2022, the tenant applied for:

- an order to cancel a One Month Notice to End Tenancy for Cause, dated November 20, 2022 (the One Month Notice)
- compensation for monetary loss or other money owed;
- an order for the landlord to comply with the Act, Regulation, or tenancy agreement; and
- recovery of the filing fee.

Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

Neither party raised an issue regarding service of the hearing materials.

### Preliminary Matter

The Residential Tenancy Branch Rules of Procedure 2.3 states:

**2.3 Related issues** Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As they are not related to the central issue of whether the tenancy will continue, I dismiss with leave to reapply the tenant's claims for compensation for monetary loss or

other money owed, and an order for the landlord to comply with the Act, Regulation, or tenancy agreement.

### Issues to be Decided

- 1) Is the tenant entitled to an order to cancel the One Month Notice?
- 2) If not, are the landlords entitled to an order of possession?
- 3) Is the tenant entitled to the filing fee?

### Background and Evidence

The parties agreed on the following particulars regarding the tenancy. It began January 1, 2022, rent is \$1,400.00, and the tenant paid a security deposit of \$700.00, which the landlord still holds.

The landlord testified that the One Month Notice was served on the tenant in person on November 20, 2022, which the tenant confirmed.

A copy of the One Month Notice was submitted as evidence. It is signed and dated by the landlord, gives the address of the rental unit, states an effective date, states the grounds for ending the tenancy, and is in the approved form.

The reason indicated for the One Month Notice is that the tenant has allowed an unreasonable number of occupants in the unit.

The landlord testified that the parties agreed at the beginning of the tenancy that the unit would be occupied by four people, and that the tenant had said those four would be her, her two children, and her mother-in-law. The landlord testified that in April 2022 the tenant's husband was also residing in the unit. The landlord testified that until the tenant's husband came, the tenant's niece would visit each week from Thursday to Sunday. The landlord testified that from April to the end of October 2022 there were five people residing in the unit, but in November the tenant's mother-in-law left.

The landlord testified there are now three people living in the unit.

The tenant testified that her husband was residing in the unit in May 2022 and left in December 2022, and that her mother-in-law left in October 2022. The tenant testified that from May to October 2022 her mother-in-law usually stayed with another relative.

The tenant testified that her niece has her own place, and did not stay at the rental unit from Thursday to Sunday each week.

The tenant testified that since December 2022 there have been only three people residing in the unit: the tenant and her two children.

### Analysis

Based on the parties' testimony, I find the landlord served the One Month Notice on the tenant in person, on November 20, 2022.

I find the One Month Notice meets the form and content requirements of section 52 of the Act, as it is signed and dated by the landlord, gives the address of the rental unit, states an effective date, states the grounds for ending the tenancy, and is in the approved form.

Section 47 of the Act states that a tenant receiving a One Month Notice may dispute it within 10 days after the date the tenant receives the Notice. As the Notice is dated November 20, 2022 and the tenant applied to dispute it on November 28, 2022, I find the tenant met the 10-day deadline.

Rule 6.6 states:

#### **6.6 The standard of proof and onus of proof**

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 most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

In this case, the onus is on the landlord to prove the reason they wish to end the tenancy as indicated on the One Month Notice.

The landlord testified that from April to the end of October 2022 there were five people residing in the unit, but that there are now three people living in the unit.

The tenant disputed the landlord's testimony, stating that when her husband resided in the unit, her mother-in-law usually stayed with another relative. The tenant testified that since December 2022 there have been only three people residing in the unit: the tenant and her two children.

In *Senft v. Society for Christian Care of the Elderly*, 2022 BCSC 744, the justice found that "arbitrators must keep the protective purpose of the RTA in mind when construing the meaning of a provision of the [Act]," and that an analysis of a dispute must consider the "post-notice" conduct of a tenant when deciding whether an end to tenancy is justified or necessary in the context of the protective purposes of the Act.

As the parties agree that there are now three people living in the unit, I find that the landlord has failed to prove the reason for the One Month Notice, that being that the tenant has allowed an unreasonable number of occupants in the unit.

Therefore, I cancel the One Month Notice, and find the landlord is not entitled to an order of possession in accordance with section 55 of the Act.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the tenant is successful in their application, I order the landlord to pay the \$100.00 filing fee the tenant paid to apply for dispute resolution.

Pursuant to section 72 of the Act, the tenant is authorized to make a one-time deduction of \$100.00 from a future rent payment in satisfaction of the above-noted award.

### Conclusion

The One Month Notice is cancelled; the tenancy will continue 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 *Residential Tenancy Act*.

Dated: April 06, 2023

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Residential Tenancy Branch