# Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

## Decision

**Dispute Codes**:

CNC MNDC OLC RP LRE RR O FF

**Introduction**

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a One-Month Notice to End Tenancy for Cause dated January 20, 2009 and effective February 29, 2009. The tenant's application also requested a Monetary Order for money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement; an Order compelling the landlord to comply with the Act, Regulation or tenancy agreement; an Order compelling the landlord to make repairs to the unit, an Order to suspend or set conditions restricting the landlord's access to the rental unit or site; an Order to authorize the tenant to change the locks and an order permitting the tenant to reduce rent for repairs, services or facilities agreed upon but not provided; and reimbursement by the landlord for the cost of the filing

Both the landlord and the tenant appeared and each gave affirmed testimony in turn.

**Issue(s) to be Decided**

The issues to be determined based on the testimony and the evidence are:

- Whether the landlord's issuance of the One-Month Notice to End Tenancy for Cause was warranted or whether it should be cancelled. This requires a determination of whether the tenant or persons permitted on the property by the tenant:

- significantly interfered with and or unreasonably disturbed other occupants or the landlord or;
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord:
- Breached a material term of the tenancy agreement and failed to correct the situation despite written notification to do so;

- Whether the tenant is entitled to monetary compensation under section 67 of the *Act* for damages or loss. This determination is dependant upon answers to the following question:
  - Has the tenant submitted proof that a claim for damages or loss is supported pursuant to *section 7* and *section 67* of the *Act*?
  - Has the tenant submitted proof of the amount of the claim?
- Whether or not there is proof that the landlord is violating one or more provisions of the Act and should be ordered to comply with the Act
- Whether or not repairs to the unit are warranted under the Act, in which case an order against the landlord should be issued
- Whether or not the tenant should be entitled to reduce the rent to compensate for repairs, services or facilities agreed upon but not provided.
- Whether or not the landlord's access to the unit should be restricted and the tenant should be permitted to change the locks.

The burden of proof is on the landlord/respondent to justify the reason for the Notice to end Tenancy under the Act. However, in regards to the remainder of the issues contained in this application the onus falls on the tenant/applicant to prove the case.

**Preliminary Issue – Evidence**

Late Evidence

The tenant had submitted late evidence that was received on file on March 9, 2009 and served to the respondent by mail sent on March 6, 2009. Service by mail is deemed to have been served five days after mailing. Pursuant to Rule 3.4 of the Residential Tenancy Rules of Procedure, to the extent possible, the applicant must file copies of all available documents, or other evidence at the same time as the application is filed or if that is not possible, at least (5) days before the dispute resolution proceeding. In cases where the hearing schedule does not permit five days, the evidence must be received at least two days prior to the hearing. In this instance I found that the evidence would not be considered as it was received too late. Accordingly, this late evidence was not taken into consideration in the determination of this dispute. However, being the tenant's response to the landlord/respondent's evidence, the tenant was still granted an opportunity to offer verbal testimony on these matters during the hearing.

Irrelevant Evidence

Additional documents from both parties were received in evidence that related to interactions and incidents which transpired subsequent to the tenant's filing of this application. I found that evidence pertaining to matters that do not predate January 27, 2009 is irrelevant. Moreover, evidence regarding the cause for ending the tenancy must date prior to the issuance of the One-Month Notice to End Tenancy for Cause dated January 20, 2009. Otherwise it is of no relevance for the purpose of these proceedings which are to deal with the question of whether or not the tenancy should be ended based on the January 20th Notice.

**Notice to End Tenancy Background and Evidence**

Submitted into evidence by the applicant/tenant in support of the application were written testimony, a copy of the tenancy agreement, a copy of the One-Month Notice to End Tenancy for Cause, copies of several letters to the landlord from the tenant on

various topics. Also in evidence were photographs from the landlord, copies of emails from other residents to the landlord, copies of written witness testimony from two different residents, written testimony from the landlord, a copy of the Saanich Bylaw regarding burning.

On the application the tenant had indicated under *Details of the Dispute*: "*Damages to vehicle, Illegal entry into suite, Illegal termination of tenancy under lease, Harassment, Restriction of laundry facilities agreed-upon costing $100.00 per month, Mould and existing damage to suite, Requesting Immediate repair of home and washing machine, Requesting extra time to serve due to misinformation from info officer*."

The landlord testified that the tenancy started as a fixed term in December 2008 with rent set at $1,695.00. The landlord testified that the tenant signed a tenancy agreement that specified parking for 3 vehicles, and contained a term stating that the parties agreed that the premises shall be used as a private residence only. The landlord testified that, however, the tenant utilized the unit as a base for his business. The landlord testified that this was not only a material breach of the agreement, but that the business activities significantly interfered with and unreasonably disturbed other occupants. The landlord testified that the tenant was also told where to park the vehicles and cautioned that the ambulance was not to be parked on site, which the tenant verbally agreed to. The landlord testified that the business operated twenty four hours per day and entailed staff and the tenant coming and going at all hours, late-night vehicle traffic, vehicle head lights and motors running, excessive speed and slamming doors. The landlord testified that the tenant was using the laundry for work-related cleaning and that the tenant operated the machines late into the night on more than one occasion which disturbed other residents. The landlord testified that he received complaints about the tenant's business-related activities and spoke to the tenant several times without result. The landlord testified that, in fact, the tenant was unrepentant and denied any wrongdoing. The landlord stated that the tenant would not commit to ceasing the business operations on the premises. Other concerns relating to the

tenant's conduct was the tenant's refusal to properly store and dispose of garbage, damage to a tree by a vehicle, dumping aquarium gravel in the yard, excessive vehicles and persisting in parking in a forbidden spot. The landlord referred to photographic evidence for some of the allegations.

The tenant testified that from the start of the tenancy, he was clear with the landlord regarding the fact that he would be conducting business activities on the premises and despite the term limiting the occupancy for personal use only, the landlord waived this requirement and verbally agreed to allow the tenant to operate the business.

The tenant testified that he did everything possible to ensure that he was not bothering other residents. The tenant acknowledged that he had had verbal conversations with the landlord in person and by telephone but had never received any written warnings from the landlord prior to the issuing of the One-Month Notice to End Tenancy. In fact, the tenant had spoken to the other residents and had the understanding that they were not seriously disturbed by the tenant's activities. The tenant acknowledged that his business involved callouts that required the tenant to start up one of the vehicles during the night but this would usually only be once or twice on any given night and measures were taken to muffle the louder vehicles and to avoid shining the lights into the units of the other residents as much as possible. The tenant testified that there are no sirens used and that the vehicle was moved to the edge of the property facing away from the complex while being warmed up. In regards to the complaint about excessive speed, the tenant stated that this was a one-time incident and that it never recurred. In regards to the staff, the tenant testified that he sometimes did allow two friends, who were also employees, to stay overnight on occasion and that occasionally some of their clothing would be laundered. But at no time did the tenant use the laundry facilities for any business-related items. In regards to the allegation of late-night operation of the machines, the tenant testified that because the washer was broken, the tenant was forced to run the dryer for a long period of time well into the night in order to dry out the sodden items. Since that time, the tenant has had to use off-site laundry. In regards to

the damaged tree, the tenant stated that the tenant's room mate accidentally hit the tree due to the slippery condition of the driveway and the tenant did not know about this until much later on. In regards to the disposal of garbage, the tenant testified that he stored the garbage until the weather improved as it was not possible to take the garbage away due to the snow. The dumping of the fish-tank gravel, according to the tenant, would not be considered to be a health issue as this was disposed of in the midst of other gravel on the property. In regards to the vehicle parking, the tenant testified that because of the weather conditions on the property, it was impossible for the vehicles to be moved at times. The tenant acknowledged that he has no intention of operating his business from another location. The tenant testified that the landlord's notice caused the tenant's room mate to leave and this has had a negative financial impact on the tenant and made it impossible for him to pay the rent owed on March 1, 2009

**Analysis - Notice to End Tenancy**

I find that the events as described by the landlord, if true, would meet the criteria under section 47(1) (d)(i) and 47(1)(d)(ii) which provide that a tenancy can be ended for cause if the tenant or a person permitted on the residential property by the tenant has either significantly interfered with, or unreasonably disturbed another occupant or the landlord or has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

I find that the tenant also breached a material term of the tenancy by operating his business on the premises contrary to the tenancy agreement that both parties had signed. However, in order to end the tenancy on this basis, it is a requirement that the tenant first be notified of the breach in writing and be given an opportunity to correct the breach. I find that the landlord neglected to issue any notification in writing prior to serving the One-Month Notice and therefore the ground of a material breach would not apply.

That being said, I find that the tenant's business operations which were not permitted still functioned to significantly interfere with and unreasonably disturb the other residents.

Under section 28 of the Act it is the right of every occupant in the complex to be free of unreasonable disturbance. In fact, the landlord would be in violation of the Act if it did not intervene to stop this from occurring. In the email to the landlord from one of the residents dated January 19, 2009, I note that the resident refers to the ongoing problems stating, *"I just wanted to let you know that the situation here is not getting any better and I feel that I should start looking for another rental suite*". This is a clear indication that there was a previous complaint by this resident to the landlord and that by January 19, 2009, the resident was prepared to end their tenancy because of the continuing problems caused by this tenant.

I find that the tenant was aware that other residents had complained about the late-night activities to the extent that the tenant even took some measures to minimize the noises and disruption. However, this fact and the fact that the tenant could not completely avoid the business call-outs, is not relevant to the question of whether or not these activities functioned to bother the other residents. Based on the testimony of the tenant, I find that the tenant was never willing to totally cease operating his business regardless of its evident impact on the peaceful enjoyment of others. Accordingly, I find as a fact that the conduct of the tenant would meet the threshold of significantly interfering with and unreasonably disturbing other occupants and the landlord.

Based on the testimony and evidence presented, I find that the One-Month Notice issued by the landlord dated January 20, 2009 and effective February 29, 2009 is fully justified and warranted under the Act. Accordingly I find that the portion of the tenant's application requesting an order to cancel the One-Month Notice to end Tenancy must be dismissed. The notice is not cancelled and remains in force.

In light of the above, the landlord made a request for an order of possession. Under the provisions of section 55(1)(a), upon the request of a Landlord, I must issue an order of possession when I have upheld a Notice to End Tenancy. Therefore the landlord is entitled to be granted this request.

**Monetary Claim for Damages**

The tenant has made a monetary claim for $4,000.00 compensation under section 67 of the *Act* for damages or loss due to damage to the tenant's vehicle that the tenant stated was caused by the landlord's failure to repair a protruding spike from a broken parking barrier. The tenant testified that the tenant had made a written complaint to the landlord about the protruding spike but the landlord took no action. As a result, due to uncleared ice and snow on the surface of the lot, the tenant's vehicle struck the spike causing a flat tire. The tenant testified that this flat tire required four hours of effort by the tenant trying to fix it, then a repair bill and also resulted in loss of use of the vehicle while it was out of commission totaling damages of $4,000.00, which the tenant is claiming against the landlord. The tenant testified that his personal insurance coverage was cancelled when he tried to make a claim because the insurer discovered that the suite he occupied did not meet the municipal zoning codes.

Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I find that in order to justify payment of damages under section 67, the Applicant would be required to prove that the other party did not comply with the Act and that this non-compliance resulted in costs or losses to the Applicant, pursuant to section 7. It is important to note that in a claim for damage or loss under the Act, the party claiming the

damage or loss bears the burden of proof and the evidence furnished by the Applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the claimant, that being the tenant, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the landlord. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. I find that the tenant has not presented sufficient proof to support the tenant's claim of damages against the landlord in that the tenant has not met element two or three of the test. Therefore I find that the portion of tenant's application requesting monetary compensation must be dismissed.

**Other Issues and Claims in the Tenant's Application**

The tenant testified that the rental rate should be reduced to compensate for repairs, services or facilities agreed upon but not provided. The tenant testified that there was a loss of laundry services valued at $100.00 and that the landlord's harassment had driven away the tenant's room mate resulting in a loss of income for the tenant reducing the value of the tenancy by interfering with the tenant's right to quiet enjoyment of the suite. I find that this issue has been rendered moot by virtue of the ending of the tenancy. Therefore this portion of the tenant's application is dismissed.

The tenant's application also requested an order to compel the landlord to comply with the Act, an order that the landlord complete repairs to the unit for plumbing, mold and washing machine and an order that the landlord's access be restricted, along with a change of the locks. Given that the Notice to End Tenancy has been upheld, a determination on the above matters is no longer necessary. Therefore I find that the portion of the tenant's application relating to each of these issues must be dismissed.

**Conclusion**

I hereby dismiss the Tenant's application to cancel the Notice to End Tenancy dated January 20, 2009 and grant the landlord's request for an order of possession pursuant to section 55(1)(a) of the Act. The tenant must be served with the order of possession. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The tenant's application is dismissed in its entirety without leave to reapply.

March 2009 _____

Date of Decision

,
Dispute Resolution Officer