



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### **Dispute Codes**

Landlord: ET  
Tenant: CNC

### **Introduction**

This hearing was ordered adjourned on November 16, 2010 to November 17, 2010 to hear the landlord's application for an order ending the tenancy early and obtaining an Order of Possession, as well as the tenant's application to cancel a notice to end tenancy for cause, pursuant to Section 73 of the *Residential Tenancy Act*. The Decision to adjourn the hearing was made to avoid prejudicing the tenant, whose application was scheduled to be heard on December 2, 2010, and to avoid prejudicing the landlord who issued a notice to end the tenancy with an effective date earlier than the tenant's application was scheduled to be heard.

The landlord was represented by an agent who gave affirmed testimony and provided evidence in advance of the hearing. The tenant also attended the conference call hearing, gave affirmed testimony, provided evidence in advance of the hearing, and was assisted by an advocate. The parties were given the opportunity to cross examine each other on their evidence.

All information, verbal testimony and evidence provided has been reviewed and is considered in this Decision.

**Issues(s) to be Decided**

Is the landlord entitled to an order ending the tenancy early and obtaining an Order of Possession?

Is the tenant entitled to an order cancelling a notice to end the tenancy?

**Background and Evidence**

This month-to-month tenancy began in 2003 and the tenant still resides in the rental unit. Rent in the amount of \$290.00 per month is payable in advance on the 1<sup>st</sup> day of each month, and there are no rental arrears.

The undisputed evidence of the parties is that on May 31, 2010 the parties attended a hearing before a Dispute Resolution Officer wherein the parties agreed to settle the dispute on certain conditions, one of which was that the tenant would employ a cleaning company regularly to clean the rental unit. Further, the agreement provided that the landlord would involve the services of a professional pest control contractor, the landlord would inspect the tenant's rental unit every 2 weeks, the tenant would permit the landlord to inspect the rental unit every 2 weeks, and the parties agreed to work together and employ mutually beneficial measures to eradicate a mouse infestation and maintain a reasonably clean rental unit to dissuade mice. The landlord's agent only saw the cleaner there once in June and then again on November 9, 2010, although he does not reside in the rental building. The landlord's agent feels that a mouse infestation in the building has been caused and persists as a result of the tenant's negligence with respect to cleanliness of his unit and that garbage and food left out in the unit has attracted the rodents.

The landlord's agent testified that when he first learned of the mouse problem, he assumed it was the tenant's responsibility, but upon appearing personally before the Dispute Resolution Officer in May, 2010 he learned that it was the responsibility of the landlord. The landlord's agent immediately took action to rid the building of mice, including hiring an exterminator and setting traps. Further, the tenant had complained

to the Environmental Health Department, and inspections had been conducted by a Health Officer. Reports of that Health Officer were provided in advance of the hearing, dated August 11, 2010, August 25, 2010, September 9, 2010 and October 27, 2010.

On November 3, 2010 the Vancouver Coastal Health Authority issued an order with respect to the rental unit as an enforcement of the city's Public Health Protection bylaw. That order references the reports of the Health Officer, and states that action must be taken by both the landlord and the tenant to bring the premises into compliance with the bylaw. The tenant was to thoroughly clean and sanitize areas where rodent activity and droppings had been identified, store food products so they are not accessible to rodents, remove unnecessary items in the unit that may provide harbourage or shelter for rodents, and provide rigid garbage containers with tight-fitting lids for refuse. The landlord was to provide professional pest control service in all affected units a minimum of once per month. The parties were to complete the actions on or before November 10, 2010. The landlord's agent testified that the landlord has done everything they could but the tenant has not maintained his unit in a state of cleanliness to prevent the harbourage of rodents, and has not complied with the settlement agreement made in May, 2010 when the parties appeared before a Dispute Resolution Officer.

The landlord's agent provided a copy of a 1 Month Notice to End Tenancy for Cause that was issued on October 29, 2010, and contains an expected date of vacancy of November 30, 2010. That notice states that:

- 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
- Tenant has engaged in illegal activity that has, or is likely to:
  - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
- Tenant has not done required repairs of damage to the unit/site
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

The landlord is requesting an order to terminate the tenancy early and obtain an Order of Possession.

The tenant testified that he notified the landlord's agents several times about the mouse infestation both verbally and in writing, and they refused to do anything about it. Copies of the written notices were provided in advance of the hearing, and the tenant testified that he placed those notes in the mail slot of the building's office. Those notes are dated commencing in October, 2009 and continue through March, 2010. Further, a large hole existed over the bathtub for 2 or 3 weeks, and that was the entry location of the mice. The hole has now been repaired, however after it had been sealed a hole still existed between the sink and the shower, and he has found droppings around that hole. Further, he stated the mice have multiplied. He stated that the landlord's agents have told other tenants who have now been affected by the infestation that this tenant is the cause of the problem, and the landlord's agent has put other tenants against him, and other tenants in the building will hardly talk to him.

The tenant further testified that he has employed the services of a housecleaning company, who will be, and has started attending his unit on the 2<sup>nd</sup> Monday of every month to clean, and that the tenant will be able to complete floor washing, vacuuming, kitchen cleaning and other duties on his own during the time the cleaners are not present.

### **Analysis**

Firstly, I cannot find that the tenant is the sole cause of the mouse infestation. Mice will look for a warm place to live, and regardless of food availability, if they can find a hole to enter into a warm home, they will. I do find, however, that the tenant's inability or negligence in cleaning his unit satisfactorily have certainly not contributed to the solution.

I further find that the agreement entered into by the parties on May 31, 2010 before a Dispute Resolution Officer was a mutual agreement, not an order made based on the merits of the case at that time.

The *Residential Tenancy Act* states that:

**32 (2)** A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

I find that the tenant has not demonstrated that he has complied with the settlement agreement made in May, 2010. I further find that the tenant has not complied with Section 32 (2). However, having found that the tenant is not the sole cause of the infestation, I cannot grant the landlord an order terminating the tenancy early.

The *Act* also sets out responsibilities of the landlord:

**32 (1)** A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

And further:

**32 (5)** A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

I find that the landlord has been diligent once learning of the landlord's responsibility at the hearing in May, 2010, and I order that the landlord continue to do so.

**Conclusion**

The landlord's application for an order terminating the tenancy early is hereby dismissed.

The tenant's application for an order cancelling the 1 Month Notice to End Tenancy for Cause is hereby allowed, and I order that the notice be cancelled.

I further order that the tenant comply with Section 32 (2) of the *Residential Tenancy Act*.

I further order that the landlord comply with Section 32 (1) of the *Residential Tenancy 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: November 18, 2010.

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Dispute Resolution Officer