



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

CNC

### Introduction

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

### Preliminary Matter

The landlord submitted a copy of a 1 Month Notice Ending Tenancy for Cause issued on September 23, 2011. It was determined that the tenant did not receive this Notice; therefore, I determined that it was of no force or effect.

### Issue(s) to be Decided

Should the 1 Month Notice Ending Tenancy for Cause issued on October 22, 2011, be cancelled?

### Background and Evidence

The landlord and the tenant agreed that on October 31, 2011, a 1 Month Notice to End Tenancy for Cause was served on the tenant indicating that the tenant has not done required repairs of damage to the unit and that the tenant has breached a material term of the tenancy that was not corrected within a reasonable time.

This tenancy commenced on February 1, 2000. Rent is due on the first day of each month. The amount of rent owed is in dispute; the parties were referred to the Residential Tenancy Act and the Residential Tenancy Branch internet site, <http://www.rto.gov.bc.ca/default.aspx> for information on allowable rent increases and the method of rent increase notice.

A copy of the tenancy agreement was supplied as evidence. The agreement includes Para 1. which states, in part:

*The tenant is liable for all willful damage and damage through negligence to property, and will keep premises reasonably clean and clear of all refuse and garbage...”*

The landlord submitted a copy of an August 25, 2010, decision issued as the result of the tenant's application to cancel a Notice ending tenancy for cause. The landlord had submitted the tenant caused extraordinary damage to the property and had not completed repairs as a result of the tenant's failure to cut an area of grass outside of the home. The dispute resolution officer found that the tenant was responsible for cutting the grass at the front of her unit and set aside the Notice.

The landlord testified that she drove by the unit sometime in September, 2011, saw the grass had not been cut, wrote the tenant a September 19, 2011, letter directing her to cut the grass; which pointed out the area was full of weeds. A photograph taken on October 31, 2011, shows that the grass area was cut. The area is barren and has little in the way of grass.

The landlord supplied photographs of common areas shared by the tenant and the occupant on the adjoining duplex. The landlord stated she assumed all of the items in the common area belonged to the tenant. The tenant stated that some of those items had been in the garage since the start of her tenancy. A mattress has been left by the garbage outside; the tenant does not know who owned that item.

The tenant agreed that she would remove her lawn mower from the furnace room; that she was unaware the landlord wanted this moved. The landlord supplied a photo of a carpet rolled up in plastic, that was in the common laundry room; once the tenant realized the landlord wished to have this removed, she did so.

The parties agreed that the tenant has 2 storage areas for her own use. The landlord stated these areas are a fire hazard. No evidence of this allegation was provided.

The landlord stated that the August 2011, decision meant that the tenant must maintain the grassed area; the landlord alleged the tenant has dug in the grassy area, causing damage.

### Analysis

During the hearing I found that the Notice issued on October 22, 2011, was of no force or effect and that the tenancy would continue.

In relation to the cutting of the small grassed area; the matter has been previously decided. The tenant is responsible for cutting the area. The tenant is not responsible for watering the grassy area, reseeding the area, weeding the area or any other maintenance of the grass. The landlord is at liberty to reseed the grass, ensure it is

adequately watered and weeded. The tenant will continue to be responsible only for cutting the lawn, or what remains of the lawn, on a regular basis.

I find the landlord's submission that the clause of the tenancy requires the tenant to maintain the greasy area was previously decided to mean that the tenant must only cut the area.

I find that the landlord has failed to prove, on the balance of probabilities that the items left in the common areas belong to the tenant. I find that the tenant is not responsible for all of the items that have been left in the common areas of the property. The landlord had assumed the items belonged to the tenant, the tenant has confirmed they are not hers. The landlord is at liberty to dispose of those items, as required by the Act and Regulation.

There was no evidence before me that the tenant's assigned storage spaces pose a fire hazard. The landlord submitted it is a hazard, but provided no evidence in support of that allegation. If the landlord obtains a local government Order indicating the tenant's own storage area is a hazard; then the tenant must be given a copy of any report and an opportunity to comply with any Order given in relation to that area.

### Conclusion

As I have determined that the landlord has submitted insufficient evidence to establish that they have grounds to end this tenancy pursuant to section 47 of the Act, I hereby set aside the One Month Notice to End Tenancy for Cause issued on October 22, 2011, and I Order that this tenancy 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: November 22, 2011.

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Residential Tenancy Branch