



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC

### Introduction

This matter dealt with an application by the Tenant to cancel a One Month Notice to End Tenancy for Cause dated October 17, 2011.

### Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

### Background and Evidence

This month-to-month tenancy started on March 1, 2011. The rental property is a senior's housing property that contains 90 suites. On October 17, 2011, the Landlord's agent served the Tenant with a One Month Notice to End Tenancy for Cause dated October 17, 2011 by posting it to the rental unit door. The grounds set out on the Notice were as follows:

- 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;
  - put the Landlord's property at significant risk.

The Landlord's agent said there was an incident on June 24, 2011 where he had to use his pass key to gain entry to the Tenant's suite because the smoke alarm was going off, he could smell smoke in the corridors and the Tenant was not home. The Landlord's agent said the fire department was dispatched to the rental property and the source of the smoke was found to be a pressure cooker that had been left on high heat on the stove. The Landlord's agent said this was a very serious incident and he believed that a fire would have occurred within another 10 minutes. The Landlord's agent said he spoke to the Tenant following this incident and she advised him that she thought she had turned the element off before leaving the rental unit. The Landlord's agent said he told the Tenant that he understood if this was an inadvertent mistake but advised the Tenant that if her tenancy was to continue, she needed to be more careful to ensure that a similar incident did not happen again.

The Landlord's agent said a similar incident occurred again on October 6, 2011. On that day, the fire alarm in the Tenant's suite went off and the Landlord's agent again had to use his pass key to gain entry because the Tenant was not home. The Landlord's agent said he discovered a pot of chick peas on the stove that had almost boiled dry (ie. there was little to no water left in the pot) and the element was turned on high. The Landlord's agent said when he spoke to the Tenant about this she said she thought she had left the element on low while she went out to dispose of some garbage and to have a cigarette. The Landlord's agent said he believed the Tenant's conduct was irresponsible (especially after having been given a warning) and as a result, he served the Tenant with the One Month Notice to End Tenancy for Cause.

The Landlord's agent said that since the first incident, he has received many calls on the emergency telephone line from other occupants in the same wing as the Tenant whenever her fire alarm goes off. The Landlord's agent claimed that these other occupants are on a heightened state of alert and afraid for their safety due to the Tenant's actions.

The Tenant and her advocate claimed that both of the incidences in question were mistakes that were caused or contributed to by malfunctioning stove knobs. Both Parties agree that in order to turn the elements of the stove, they must be pushed in and then turned. However, the Tenant claimed that when turned, the knobs do not automatically stop at the "off" position. Consequently, the Tenant claimed that on June 24, 2011, she believed that the stove element was turned off before she left. The Tenant admitted that on October 6, 2011 she left the stove element on however she claimed that she thought she had left it on a low heat setting. The Tenant claimed that it was the steam from the pot that set off the fire alarm and that the pot had not boiled dry. The Landlord's agent denied that there was a malfunction with the knobs of the stove and argued that he has had no other reports of alleged malfunctions from other tenants of the rental property although all 90 suites have the exact same stove.

The Tenant and her advocate admitted that the fire alarm in the rental unit goes off frequently but argued that was because it is very sensitive to such things for example, as steam from the shower. The Tenant and her advocate also argued that some of the complaints made to the Landlord were from the Tenant's neighbour and motivated in part by malice because she did not get along with the Tenant. The Landlord's agent admitted that the smoke alarms in the suites were sensitive however he claimed that they were intended to be that way. The Landlord's agent also claimed that he rarely gets emergency calls about other tenants' smoke alarms going off and the calls to him about the Tenant's fire alarm are from a number of occupants in the same wing as the Tenant and not just from her neighbour. The Landlord's agent said he is aware that the Tenant and her neighbour do not get along but claimed that the Tenant's neighbour's animosity is the result of her fear of a fire because she had previously experienced one.

### Analysis

In this matter, the Landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy.

The Landlord's agent argued that the safety of other occupants in the rental property and the landlord's property were put at risk in two separate incidences where the Tenant left the stove in the rental unit on when she left the suite. The Landlord's agent argued that the first incident was very serious and that the Tenant was given a verbal warning that if the Tenant was not more careful, her tenancy could be in jeopardy. The Landlord's agent said he was concerned when he discovered on October 6, 2011 that the Tenant left the rental unit fully aware that she had left the stove on thereby putting the safety of others at risk.

Although the Tenant argued that there was a malfunction of sorts with the knobs of the stove not stopping in the off position this was disputed by the Landlord's agent and the Tenant provided no corroborating evidence of it. Consequently, I find on a balance of probabilities that there is no malfunction of the stove knobs but rather it was the result of operator error that the stove was not turned off on June 24, 2011. I accept the Tenant's evidence that she believed she had turned off the stove. However, I also accept the Landlord's agent's evidence that a red indicator light on the stove would have alerted the Tenant to the fact that an element was still on. Therefore, I conclude that it was the Tenant's inadvertence that resulted in the first incident on June 24, 2011 and I find that she was warned on that date that any further inadvertence that put other occupants at risk of harm would result in her tenancy ending.

The Tenant's advocate argued that there have been no further incidences since October 6, 2011 and that the Tenant does not use her stove in order to ensure there are no further incidences. The Tenant's advocate also provided a written statement purportedly submitted from the Tenant's former landlord who claimed that she was a good tenant. However, s. 47(1)(d)(ii) and (iii) of the Act **only** requires a finding that a tenant **has engaged** in an act or acts (prior to the issuance of the One Month Notice) that has jeopardized the safety of another occupant or put the landlord's property at significant risk. Consequently, I find it irrelevant to this matter whether the Tenant is likely or unlikely (as the case may be) to engage in a similar act in the future and therefore I must confine this decision to the 2 incidences in issue.

I find that on October 6, 2011, the Tenant knowingly left the rental unit with the stove element on even after she had been warned by the Landlord and experienced the dangers of doing the same thing only 4 months prior. Although the Tenant argued that she believed the element had been turned to a low setting, I find that this is of little consequence because she should not have left it unattended and in doing so, I find that the Tenant acted carelessly and put the Landlord's property and the safety of other occupants in the rental property at significant risk. Consequently, I find that there are

grounds for the One Month Notice to End Tenancy for Cause dated October 17, 2011 and the Tenant's application to cancel it is dismissed without leave to reapply. The Landlord's agent requested and I find pursuant to s. 55(1) of the Act that he is entitled to an Order of Possession to take effect on November 30, 2011.

### Conclusion

The Tenant's application is dismissed without leave to reapply. An Order of Possession to take effect on November 30, 2011 has been issued to the Landlord. A copy of the Order must be served on the Tenant and may be enforced in 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: November 21, 2011.

---

Residential Tenancy Branch