



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPC, FF

### Introduction

This hearing was convened by way of conference call in response to an application filed by the landlord for an Order of Possession for cause and to recover the filing fee from the tenants for the cost of this application.

An agent for the landlord attended the conference call hearing, provided affirmed testimony and provided evidence in advance of the hearing. The landlord's agent also called one witness who gave affirmed testimony. Despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents, the tenants did not attend. The landlord's agent provided proof that one of the tenants was served with the hearing documents aforementioned by registered mail on January 5, 2012, and provided a copy of the registered mail receipt. The landlord's witness testified during the hearing that the other tenant was personally served on January 6, 2012. I find that both tenants have been served in accordance with the *Residential Tenancy Act*.

All evidence and testimony provided have been reviewed and are considered in this Decision.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for cause?

### Background and Evidence

The landlord's agent was unable to provide testimony with respect to the date the tenancy began or the amount of rent payable, however did testify to seeing the tenancy agreement and received the spellings of the tenants' names from that document. Rent is paid directly to the landlord by a government agency. The rental unit is a 2 bedroom condominium unit within a condominium complex that houses 65 units.

The landlord's agent also testified police have been called to the rental unit on several occasions and stated that to the knowledge of the agent, 6 police files have been opened in the last 3 months. There is also a concern of the safety of other residents within the complex, some of whom are elderly.

Two police calls have resulted in criminal drug charges, and during those investigations the door of the rental unit was broken down by a SWAT-team type of take-down involving several police personnel and several police vehicles. The door was physically broken down on 2 occasions, and charges have been laid.

The landlord has had the tenants served with a 1 Month Notice to End Tenancy for Cause, a copy of which was provided for this hearing. The notice is dated November 30, 2011 and contains an expected date of vacancy of December 31, 2011, but the tenants have not vacated the rental unit. The notice states that the reasons for issuing the notice are:

- Tenant has allowed an unreasonable number of occupants in the unit/site;
- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- Tenant has engaged in illegal activity that has, or is likely to damage the landlord's property, and adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The landlord's agent testified that video surveillance in the building shows people arriving at the rental unit, some with bicycles, and not leaving. The building has a key fob system that provides a report showing when someone is let in. Between midnight and 5:00 a.m. daily an alarming number of people have entered the building and have gone to the tenants' rental unit.

The agent also testified that pepper spray was used in the common hallway area by one of the tenants or a guest of the tenants on 2 occasions, and another resident was affected by the spray. Further, the tenants have not paid the hydro bill so hydro was disconnected, and the tenants placed an extension cord in the hallway to allow the tenants to use electricity. The cord is a tripping hazard, and the tenants have no right to use the building's electricity for their own purposes.

The police told the landlord's agent that evidence of drug trafficking was found in the rental unit, and the tenants have been selling drugs from that rental unit. Further, one of the police files relates to a drug overdose; a person was left on the floor of the lobby and paramedics were called. The police also recommended police accompaniment

when serving the notice to end tenancy, but the police were not available to attend on November 30, 2011 when the notice was served.

The landlord's witness is a caretaker of the building and testified that the witness has known the owner landlord for several years, and the landlord attends to collect rents on the 1<sup>st</sup> day of each month, and the witness therefore believes that rent is payable on the 1<sup>st</sup> day of each month for this particular rental unit.

The witness testified to speaking to the landlord about heavy traffic in the rental unit, and then the police broke the door down. The RCMP told the landlord that drugs were found in the rental unit, and released a charged person on a Promise to Appear for Court. The witness stated that 6 police reports have been obtained, but the police have attended at the rental unit probably 12 times.

The witness also testified that 2 girls have been staying in the rental unit regularly, and so many people come and go the witness is unable to keep track. Another person who is not on the tenancy agreement stays in the rental unit full-time. Since the first police visit, different people stay in the rental unit on a regular basis.

On 3 occasions the witness received calls from residents below this rental unit complaining of loud music. Another resident above this rental unit also complained about loud music. The witness also received a complaint of someone hammering on the door of the rental unit; the complainant went out and told the person that obviously no one was home and that the visitor should leave. The complainant was met with foul language. Another resident complained about a fight in the common hallway. The resident called the police and a guest of the tenants used pepper spray.

The witness also testified that police used a ram bar twice to enter the rental unit. The first time, people were arrested and the door had to be repaired, so the witness put a new lock on it. One of the tenants arrived back at the rental unit and the witness had to give the tenant a key. The door was destroyed, and the witness found holes in the drywall and in the bathroom door. Further, holes have been kicked in the walls of the common hallway.

The tenants didn't pay their hydro bill and the hydro was cut off. As a result, the tenants ran an extension cord from the rental unit to the hallway. The witness told the tenant that the tenant could not steal power and gave them an hour to arrange something with the hydro company. Then the witness put a note up for the hydro company that asked that the hydro not be reconnected without speaking to the witness. The hydro employee did speak with the witness, and advised the witness that arrangements had

been made to reconnect and he had to hook it back up again. The extension cord is now gone.

The witness testified to personally serving the Landlord's Application for Dispute Resolution upon one of the tenants on January 6, 2012.

### Analysis

The *Residential Tenancy Act* states that if a tenant is served with a notice to end the tenancy, the tenant must dispute the notice within 10 days of receiving it, or the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice. In this case, I find that both tenants were served with the notice to end tenancy and neither tenant has applied to dispute the notice.

The tenants were served with the notice to end the tenancy by placing it under the door of the rental unit. The *Act* states that documents served in that manner are deemed to have been served 3 days later. The *Act* also requires that a notice served must end the tenancy effective on a date that is not earlier than one month after the date the notice is received by the tenant, and the day before the day rent is payable under the tenancy agreement. The effective date of the notice to end tenancy in this case is December 31, 2011, and I also find that the notice is deemed to have been served on December 3, 2011. The landlord's agent was not sure of the date that rent is payable under the tenancy agreement, but the landlord's witness testified that the landlord collects rents for units within the complex on the 1<sup>st</sup> day of each month. I therefore accept that rent is payable on the 1<sup>st</sup> day of each month under the tenancy agreement. Therefore, the effective date of the notice ought to read January 31, 2012, not December 31, 2011. The *Act* also states that incorrect effective dates are automatically changed to the earliest date that complies with the *Act*, and I find that the earliest date that complies with the *Act* is January 31, 2012.

I further find that the tenants have not disputed the notice and are conclusively presumed to have accepted that the tenancy ends. The landlord will have an Order of Possession effective January 31, 2012.

The landlord is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

### Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord effective January 31, 2012 at 1:00 p.m. The order must be served on the tenants. If the tenants 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.

I further grant a monetary order in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$50.00.

These orders are final and binding on the parties and may be enforced.

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: January 20, 2012.

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Residential Tenancy Branch