



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNC / OPC

### Introduction

This hearing was scheduled in response to the tenant's application to cancel a notice to end tenancy for cause. Both parties participated in the hearing and gave affirmed testimony. During the hearing the landlord orally requested an order of possession.

### Issue(s) to be Decided

Whether the tenant is entitled to the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

There is no written tenancy agreement for this month-to-month tenancy which began on November 1, 2011. Monthly rent of \$800.00 is payable in advance on the first day of each month, and a security deposit of \$400.00 was collected.

The landlord issued a 1 month notice to end tenancy for cause, a copy of which is not in evidence. The parties agree that the notice is dated March 1, 2012 and that it was posted on the tenant's door on that same date. Subsequently, the tenant filed an application to dispute the notice on March 9, 2012. The date shown on the notice by when the tenant must vacate the unit is March 30, 2012. Reasons shown on the notice for its issuance are as follows:

Tenant or a person permitted on the property by the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord
- put the landlord's property at significant risk

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

The landlord's issuance of the notice arises principally out of the tenant's placement of a 29 foot fifth wheel trailer on the property at a location not approved by the landlord. The tenant's stated intention is to use the trailer as an office.

There was no mention by the tenant about the introduction of a trailer onto the property at the time when the parties entered into the tenancy agreement. The landlord claimed that the septic field on the property was put at risk when the tenant situated the trailer by first towing it over the septic field; the tenant did not dispute that the trailer had been towed over the septic field but argued that he took precautions by laying down plywood on the ground in advance of towing.

The landlord also testified that the tenant placed the trailer on a cement pad constructed for the purpose of locating a barbeque. Additionally, the landlord claimed that the trailer is visually offensive for upstairs tenants when looking out of the bedroom window.

The tenant dismissed the landlord's request related to alternate placement of the trailer. In summary, the tenant takes the position that the alternate placement is not suitable because it is not level, that the trailer is too big for the suggested location, and that the distance from the trailer to the electrical outlet would be too great.

During the hearing the landlord was unable to confirm that the presence or particular location of the trailer contravenes any particular law(s) or bylaw(s).

### Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

Section 47 of the Act addresses **Landlord's notice: cause**, and provides in part:

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(d) the tenant or a person permitted on the residential property by the tenant has

- (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
- (iii) put the landlord's property at significant risk;

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

- (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property,...

Residential Tenancy Policy Guideline # 32 speaks to “Illegal Activities,” and provides in part:

The term “illegal activity” would include a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord’s property, or other occupants of the residential property.

The party alleging the illegal activity has the burden of proving that the activity was illegal. Thus, the party should be prepared to establish the illegality by providing to the dispute resolution officer and to the other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw.

Having considered the documentary evidence and testimony, I find that the landlord has failed to prove that the tenant has “engaged in illegal activity” arising from either the presence or placement of the trailer on the property.

Further, however, based on the documentary evidence and testimony I find that the tenant brought the trailer onto the property and situated it without the landlord’s explicit approval. I further find that the tenant put the integrity of the septic field at risk by towing the trailer over it. I also find that the pad on which the tenant located the trailer was constructed for such purposes as locating a barbeque, and not for accommodating a 29 foot fifth wheel trailer. Finally, I find that despite the landlord’s request that the tenant remove or re-locate the trailer, the tenant has declined to do so.

In summary, I find on a balance of probabilities that the tenant has “put the landlord’s property at significant risk,” and that the landlord has therefore established entitlement to an order of possession. Following from all of the foregoing, the tenant’s application is hereby dismissed.

Section 55 of the Act speaks to **Order of possession for the landlord**, and provides in part:

55(1) If a tenant makes an application for dispute resolution to dispute a landlord’s notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

- (a) the landlord makes an oral request for an order of possession, and
- (b) the director dismisses the tenant’s application or upholds the landlord’s notice.

Section 53 of the Act speaks to **Incorrect effective dates automatically changed**, and provides in part:

53(1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.

In short, as the 1 month notice was dated March 1, 2012, and was served by way of posting on the tenant’s door on that same date, I find that the effective date of the notice is April 30, 2012.

### Conclusion

I hereby issue an order of possession in favour of the landlord effective not later than **1:00 p.m., Monday, April 30, 2012**. This order must be served on the tenant. 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.

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: April 3, 2012.

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Residential Tenancy Branch