



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

CNC, MNDC, OLC, FF

### Introduction

The tenant applied for dispute resolution to cancel a Notice to end tenancy for cause, requesting compensation for damage or loss under the Act, Orders the landlord comply with the Act and to recover the filing fee costs from the landlord.

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 Matters

The tenant indicated several matters of dispute on his application and confirmed that the main issue to deal with during this proceeding was the Notice to End Tenancy. For disputes to be combined on an application they must be related. Not all the claims on this application were sufficiently related to the main issue to be dealt with together. Therefore, I dealt with the tenant's request to set aside or cancel the Notice to End Tenancy for Cause and I dismissed the balance of the tenant's claim with liberty to re-apply.

The parties were informed that the emails submitted as evidence would be utilized only if they were referenced during the hearing. The parties submitted a number of email "strings" some of which were duplicates; I have considered only those that were reviewed during the hearing.

### Issue(s) to be Decided

Should the 1 Month Notice to End Tenancy for Cause issued on April 18, 2012, be cancelled?

Is the tenant entitled to filing fee costs?

## Background and Evidence

The parties agreed to the following facts:

- The tenants signed a fixed-term tenancy agreement which ended on April 30, 2012;
- On April 7, 2012, the parties signed a 2<sup>nd</sup> fixed term tenancy agreement that commenced on May 1, 2012;
- Both fixed-term tenancy agreement require the tenants to vacate the unit at the end of the term;
- There are 2 co-tenants;
- That neither tenancy agreement addendum included a clause limiting the number of occupants in the unit; and
- That addendums were signed prohibiting pets.

The rental unit is a 3,600 square foot, 4 bedroom home in an urban area.

The landlord and the tenant agree that a 1 Month Notice to End Tenancy for Cause was served on the tenants indicating that the tenants are required to vacate the rental unit on May 31, 2012.

The reasons stated for the Notice to End Tenancy were that the tenants have:

- allowed an unreasonable number of occupants in the unit;
- put the landlord's property at significant risk;
- not completed required repairs;
- breached a material term of the tenancy that was not corrected within a reasonable time;
- assigned or sublet the rental unit without written consent; and
- that the tenants have not paid a pet deposit within 30 days as required by the tenancy agreement.

The landlord testified that she had not been to the rental unit during the first 11 months of the tenancy. On April 7, 2012, she had made arrangements with the female tenant to drop off the tenancy renewal agreement for signature. When the landlord entered the home she asked the child who was present if she could look through the house.

The landlord then spoke to another young person who was present and concluded that this individual was residing in the home. The landlord had not approved of this arrangement and submitted that there are now an unreasonable number of people living in the rental unit.

On April 28, 2012, ten days after the Notice to end tenancy was issued, the landlord gave the tenants a letter which outlined concerns; such as:

- the additional occupant;
- storage of furniture in the garage, that takes up the entire garage;
- breaking the lock on the front door through normal wear and tear, which is the tenant's responsibility;
- a bird in the kitchen, in breach of the pet clause;
- water stain on the basement ceiling as a result of unapproved repairs made by the tenant;
- complaints made by the gardener in relation to the toys and appearance of the exterior of the home; and
- pots, sports equipment, hockey nets at the side of the house.

The landlord stated the male tenant has denied her entry to the home, despite emails sent informing the tenants of the need to enter the property.

The landlord believes the front door lock has broken as the result of excessive wear and tear as the tenants are not using the garage entrance. The landlord believes the tenant is going to repair the lock.

On April 7, 2012, when the landlord inspected the home she discovered that the tenants had a bird in the kitchen. This was in breach of the tenancy addendum that was signed in 2011. The landlord has not inspected the home to see if the bird has been removed and alleged that the tenants will not allow her entry to the home.

The tenants have placed the property at risk as they repaired a hot water tap in 2011 and the plumbing now appears to have leaked through the floor causing discolouration to the basement ceiling.

The tenant was expected to repair the door handle and make improvements to the appearance of the yard; the landlord indicated the tenants have failed to address these issues, which she finds supports the reason selected on the notice to end tenancy.

The tenants have breached a material term of the tenancy by storing property that belongs to other people, in the garage.

The landlord selected the sublet reason as cause for eviction, as the presence of the additional occupant was the equivalent to subletting.

The landlord testified that the tenants have not kept the house to a reasonable standard, that the carpets are stained and that the tenancy should end.

The landlord supplied an undated letter from her gardening service provider who indicated that the yard always has toys, golf balls, bigger balls and garbage and that it would be easier if these items were removed when the gardener was working. The gardener believes that personal items in the yard give the home the appearance of neglect.

The tenants have a trampoline and this is a hazard for the gardeners.

The landlord submitted photographs of the state of the home at the start of the tenancy.

The tenant responded that they have not caused any damage to the unit, that items along the side of the home are normal amounts of belongings, such as a hockey net used by the children. The tenant's move the trampoline every Monday; as the gardener comes on Tuesdays.

The tenant acknowledged that the children have some toys in the yard and that they have talked with gardeners who never suggested they had any safety concerns in relation to the toys.

The tenant submitted photographs of the yard, as evidence of the state of the exterior of the rental property.

The landlord declined to accept the tenant's offer to mutually agree to end the tenancy effective July 31, 2012.

### Analysis

The landlord attended at the rental unit on April 7, 2012, and entered into a new fixed-term tenancy with the tenants, this 2<sup>nd</sup> tenancy was to commence on May 1, 2012. The landlord then issued the tenants a 1 Month Notice to End Tenancy prior to the end of the initial fixed-term and before the start of the fixed-term that was to commence on May 1, 2012.

The landlord submitted that she became aware of the deficiencies on April 7, 2012, but could not explain why she would then enter into a new tenancy agreement with the tenants, when the current fixed term required the tenants to vacate by April 30, 2012. On this basis alone I would cancel the Notice to end tenancy, as it was issued prior to the May 1, 2012, tenancy even began. I find that the 2 fixed-term tenancies are very separate; one ended on April 30, 2012; a new tenancy commenced on May 1, 2012.

In order to end the tenancy that commenced on May 1, 2012, the landlord would be required to issue a Notice on a date that was within the time-frame of that tenancy.

However, I have also considered the reasons upon which the Notice to end tenancy was issued and find that the landlord has provided insufficient evidence to support the reasons given on the April 18, 2012, Notice. In reaching this conclusion I considered the following factors and found that none of the reasons supported ending the tenancy:

### Unreasonable Number of Occupants

I find that presence of an additional young person in a home of this size and number of bedrooms is not unreasonable. There are now 6 individuals residing in the home. The landlord has not set limits on the number of occupants, as part of the addendum signed with the tenants and, even once she determined on April 7, 2012, that the 6<sup>th</sup> person was living in the home, she did not append a term limiting the number of occupants for the tenancy that commenced on May 1, 2012.

### Significant Risk to the Property

I have considered the landlord's submission that the deficiencies she described are so significant in nature that the tenancy should end. I determined that the items that the landlord has indicated are significant do not form the basis for eviction. If the carpets are stained or the ceiling requires painting, the landlord is at liberty inspect the home and to give the tenants instruction to make repairs that are the result of any negligence on the part of the tenant. If the parties do not agree to the need and responsibility for repairs, then the landlord is at liberty to submit an application claiming compensation.

By the landlord's own submission the door lock is broken as the result of wear and tear. The landlord is aware of the need to repair the lock, an item that is considered an emergency repair, as provided by section 33 of the Act. I have rejected the submission that the tenant's have over-used the front door; the tenants are free to store items in the garage and to use whichever door they choose to use.

### Required Repairs

On April 7, 2012, the landlord became aware of the need to repair the door handle and lock. The landlord is responsible, as provided by section 32 of the Act, to make repairs required to the unit. The tenant must make repairs required as the result of negligence. There was no evidence before me that the tenants have been given notice between April 7 and April 18, 2012, of the need to make any repairs as the result of negligence on the part of the tenants.

### Sublet

The tenants have not sublet the unit; they have a young woman living in their home. This arrangement was considered in relation to the claim that there are an unreasonable number of people living in the unit.

### Pet deposit

The tenant denied that there is a pet in the home; the landlord had no evidence that a pet was in the home or, if there had been on April 7, 2012, that it remained in the home at the time the Notice was issued. The tenants were not asked to pay a pet deposit; this would only occur if the landlord was approving the keeping of a pet.

As the application has merit I find that the tenant is entitled to filing fee costs in the sum of \$50.00, which may be deducted from the next month's rent due.

Discussion occurred in relation to the landlord's right to enter the residential property, as provided by section 29 of the Act. Discussion also occurred in relation to a tenant's right to quiet enjoyment. The parties were encouraged to become familiar with their rights and obligations as provided by the Act. I have enclosed a copy of the *Guide for Landlords and Tenants in British Columbia* for each party.

### Conclusion

I have determined that the landlord has submitted insufficient evidence to establish that she has grounds to end this tenancy pursuant to section 47 of the Act.

The Notice to end tenancy for cause issued on April 18, 2012, is of no force and effect.

I Order that this tenancy continue until it is ended in accordance with the Act.

The tenant may deduct the \$50.00 filing fee cost from the next month's rent due.

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: May 11, 2012.

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Residential Tenancy Branch