



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC MNDC ERP RP

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain an Order to cancel a Notice to end tenancy issued for cause, for a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, and to obtain Orders to have the Landlord make repairs to the unit and emergency repairs for health or safety reasons.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. The Landlord confirmed receipt of the original and amended applications. During the hearing each party was given the opportunity to provide their evidence orally and respond to each other's testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

1. Should the 1 Month Notice to end tenancy for cause be cancelled?
2. Is the Tenant entitled to a Monetary Order?
3. Should the Landlord be ordered to make repairs to the unit, site or property and emergency repairs for health and safety reasons?

### Background and Evidence

The parties agreed they entered into a month to month tenancy that began on April 1, 2009. Rent is payable on the first of each month in the amount of \$650.00 and on April 1, 2009 the Tenant paid \$325.00 as the security deposit. The Tenant had made payments totalling \$60.00 towards a pet deposit which was returned to her when her dog passed away.

The Tenant submitted copies of the following into evidence: a 1 Month Notice dated July 5, 2012; her written statement, a list of repairs and updates requested from the

Landlord; a June 12, 2012 letter written to the Landlord; and e-mail communication between the parties in May 2012.

The Landlord submitted documents into evidence which included: the Landlord's written statement; copies of the tenancy agreement; a chronological list of events that occurred between April 1, 2009 and July 9, 2012; and several letters and e-mail communications between the parties from November 21, 2010 to June 24, 2012; and a written letter of complaint from another tenant.

The Landlord submitted that the 1 Month Notice to end tenancy was issued to the Tenant after a number of e-mails were received over the past few years which the Landlord considers harassing. The Landlord stated that there were also numerous phone calls over the past two years from neighbours complaining about the Tenant.

The Landlord acknowledged that previous issues with this Tenant were dealt with by meeting with the Tenant to resolve issues and there had been verbal warnings issued. The Landlord alleged that the Tenant was issued written warnings through e-mails however they did not include these e-mails in their evidence package and were not able to provide testimony as to the occurrence or date they were issued. The Landlord confirmed they had no knowledge that the Tenant was involved in illegal activities.

When I asked what sparked the issuance of the 1 Month Notice on July 5, 2012, the Landlord spoke about an incident that occurred on June 23, 2012 whereby the Tenant and her neighbour got into an altercation, after which the Tenant called the police. The Landlord stated the neighbour called them to report the incident the same day and they requested she put her complaint in writing. The Landlord stated they received the neighbour's written complaint on about June 25, 2012 and she discussed the situation with the Secretary-Manager. No action was taken in response to this written complaint.

The Landlord stated that she attended the board meeting the evening of July 3, 2012 and it was at that meeting that they decided to issue the Tenant the eviction notice. She clarified that they were served the Tenant's hearing documents the next day on July 4, 2012 and issued the 1 Month Notice on July 5, 2012.

The Tenant affirmed she is seeking \$225.00 as compensation for the loss of 12 crystal wine glasses and a fridge full of food. She advised that the wine glasses broke when the cupboard above her fridge fell off the wall about a year ago. It was the same day that she realized her fridge was not working properly; so she requested the Landlord replace her fridge and put the cupboard back up on the wall. She confirmed the fridge was replaced within a short period of time however she had to throw out all of her fresh

and frozen food as it had spoiled. The cupboard was not reinstalled until a few weeks before she filed her application for dispute resolution.

The Tenant advised she is seeking repairs for health and safety reasons because her oven seal is broken and her hood fan is not working properly. She is also seeking general repairs to have all her window blinds replaced and the linoleum and carpet replaced. She noted that other units have the flooring changed when tenants move out and so she is requesting the same upgrades to her unit. She also noted that after the Landlord completed their annual inspection they had agreed to replace the oven, hood fan, and the kitchen blind. The Tenant confirmed she wrote to the Landlord on June 12, 2012 and informed them of her intentions to seek assistance through the dispute resolution process.

The Tenant also spoke about her kitchen tap which she indicated was loose. She stated the water taps are a lever that is located directly above the water nozzle which swings from side to side and this assembly is loose. She had requested that this be replaced as well but would be agreeable to have it tightened.

The Landlord confirmed that after their inspection they had deemed the oven, hood fan, and kitchen blind needed to be replaced; however they put these items on hold pending the outcome of this hearing. They do not believe there is any need to replace the linoleum or carpet.

I asked the Landlord's Agent who conducted the inspection if she turned the kitchen tap on during her inspection and if it was loose at that time. The Agent confirmed that she checked the tap and stated that it was manageable and usable. The Agent continued to answer my direct question with evasive answers at which point I limited her answer to yes or no and asked if the kitchen tap was loose; at which time she said no.

A discussion followed whereby the Tenant acknowledged that she now understood she could not prevent the Landlord from inspecting or entering her unit as long as they provided her proper written notice of entry.

### Analysis

When a tenant disputes a 1 Month Notice to End Tenancy the onus lies with the Landlord to meet the burden of proof for the reasons for issuing the Notice.

In this case the 1 Month Notice was issued for reasons that:

***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*

In this case the Landlord provided evidence of inappropriate e-mails, sent by the Tenant that date back to April 2011 and October 2011 plus evidence of the Tenant refusing the Landlord entry for an inspection back in 2011. The Landlord is relying upon these scenarios which date back 6 months to a year as the reasons for ending this tenancy yet there is no evidence to support the Tenant was ever issued a written warning informing her that if this behaviour continued it would be grounds for eviction. Furthermore the Landlord provided evidence that they worked through these issues with the Tenant and allowed the tenancy to continue without written documentation.

The Landlord confirmed there was no evidence that the Tenant was involved in illegal activity.

I note that the Tenant advised the Landlord in mid June 2012 of her intent to seek a remedy through dispute resolution and it was not until the board meeting a few weeks later that this was discussed and the decision was made to issue the eviction notice. The Notice was issued the day after the Tenant served the Landlord with her notice of dispute resolution.

Based on the aforementioned I find there to be insufficient evidence to support the reasons for issuing the 1 Month Notice. I further find the evidence supports that the Notice was in fact issued in retaliation to the Tenant advising the Landlord of her intent on seeking guidance and a remedy through dispute resolution.

The Tenant has sought \$225.00 for compensation of her loss of wine glasses and food from her fridge. Losses which she indicates occurred approximately one year ago. There is no evidence before me that supports the Tenant took any action to recover these losses when they occurred; nor is there evidence, such as an inventory or cost of the loss. Therefore, I find there to be insufficient evidence to support the claim for \$225.00 and the claim is hereby dismissed.

The evidence supports both parties agreed that the oven, the kitchen fan and the kitchen blind need replacement and the replacement was stalled pending the outcome of this hearing. Accordingly, I hereby Order the Landlord to replace the oven, the kitchen fan, and the kitchen blind no later than August 15, 2012.

The Tenant has applied to have the rest of the window blinds replaced as well as upgrades to the linoleum as it is old and yellow and the carpet which is old and worn. Although there may be evidence that these items are cosmetically not appealing as newer flooring and blinds, there is no evidence before me to indicate the replacement of these items is warranted at this time. Therefore this claim is dismissed.

The Tenant has alleged that her kitchen faucet is loose. After questioning the Landlord's Agent about her inspection of the faucet I found the Agent's responses to my questions to be elusive and flippant which leads me to favour the Tenant's evidence that the faucet is in fact loose. Therefore I hereby Order the Landlord to have a licensed plumber inspect and tighten or repair the kitchen faucet no later than August 15, 2012.

It was evident during the hearing that neither the Landlord's Agents nor the Tenant were aware of their obligations and rights under the Act. Therefore, I have included with my decision a copy of "A Guide for Landlords and Tenants in British Columbia" and I encourage the parties to familiarize themselves with their rights and responsibilities as set forth under the *Residential Tenancy Act*.

### Conclusion

The 1 Month Notice to End Tenancy issued July 5, 2012, is **HEREBY CANCELLED** and is of no force or effect.

The Landlord is **HEREBY ORDERED** to replace the oven, hood fan, and kitchen blind no later than **August 15, 2012**.

The Landlord is **HEREBY ORDERED** to have a licensed plumber inspect and tighten or repair the kitchen faucet no later than **August 15, 2012**.

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: July 23, 2012.

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Residential Tenancy Branch