



# Dispute Resolution Services

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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 July 27, 2012.

At the outset of the hearing, the Parties confirmed that they were each served with the others' documentary evidence and the Tenant's hearing package (which includes the Application for Dispute Resolution and Notice of Hearing). All of the documentary evidence has been reviewed by me. The Parties were also given an opportunity at the hearing to give their evidence orally, to have witnesses attend and to ask questions of the other party. All testimony was taken under oath or affirmation.

### Issue(s) to be Decided

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

### Background and Evidence

This month to month tenancy started in April of 1984. The rental unit is a bachelor suite in a multi-unit building. On July 27, 2012, the Landlord's resident manager, B.L., served the Tenant in person with a One Month Notice to End Tenancy for Cause dated July 27, 2012. The grounds indicated on the second page of the Notice were that,

- The Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk; and
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Landlord said that in the late-Spring of 2012 some other tenants of the rental property advised her that the Tenant had a massive amount of belongings in the rental unit. As a result of this information, the Landlord said the resident manager, B.L., did an inspection and discovered that the rental unit was so full of articles that there was only a narrow path through the rental unit that led to the kitchen and living area which were also piled high with belongings. Consequently, the Landlord said on June 4, 2012 the Tenant was given a written demand to remove the excess belongings by June 15, 2012. The Landlord said another inspection was scheduled for June 15, 2012 however the

Tenant approached B.L. that day and advised her that he needed more time so the Landlord verbally agreed to an extension of June 29, 2012.

The Landlord said B.L. did an inspection of the rental unit on July 3, 2012 and claimed that it appeared nothing had been removed. Consequently, on July 24, 2012, the Landlord gave the Tenant a final written Notice that if the rental unit was not cleaned up by July 31, 2012, the Landlord would be seeking to end the tenancy and would serve him with a One Month Notice to End Tenancy. The Landlord said the Tenant was served with the One Month Notice on July 27<sup>th</sup> but was advised that if he cleaned up the rental unit by July 31, 2012, the One Month Notice would be withdrawn. The Landlord said B.L. did an inspection on July 31, 2012 and took photographs of the rental unit which show the rental unit to be stacked with so many belongings that there was only a narrow corridor to get from the front door to the kitchen and living areas.

The Landlord said she was concerned about the fire risk and safety to other occupants in the rental property and therefore asked the fire department to do an inspection which took place on August 17, 2012. As a result of that inspection, the deputy fire chief found that the premises constituted "a fire hazard" and ordered the Tenant to "remove the significant amount of materials in order to reduce the fire load and risk of fire" within 30 days. The Landlord said the Tenant's outreach worker was recently arranged for a disposal company to remove some of the Tenant's belongings. B.L. said that when she again inspected the rental unit, she found that approximately 1/3 of the Tenant's belongings had been removed (largely from the living area) but that the corridor still had belongings stacked up along it and the bathroom and kitchen were still inaccessible. B.L. further claimed that although the Tenant's outreach worker said he would attempt to have more of the Tenant's articles removed, this is dependent on him obtaining funding to pay a disposal company and no further arrangements have been made to date.

The Landlord argued that the Tenant's accumulation and failure to remove the massive amount of belongings constituted not only a risk of fire to the rental property but also would make it impossible to discover or repair any plumbing leaks. The Landlord also argued that the Tenant was in breach of a number of material terms of the tenancy agreement namely,

- **Clause 8: Condition of Premises.** The Tenant agrees to allow the Landlord access to the rental unit to make inspections for defects and damages.
- **Clause 15: Repairs – Tenant.** The Tenant is responsible for repairing damages caused by his act of neglect or "*unusual or abusive wear and tear.*"
- **Clause 18: Use of Premises.** Tenant not to make any structural alterations without the written consent of the Landlord.
- **Clause 23: Storage.** Any personal property belonging to the Tenant and stored on the residential property must be kept in a safe condition and in a proper storage area

The Tenant did not dispute that he had accumulated a large number of belongings and admitted that the volume was so massive that it prevented him from being able to reside in the rental unit for the past 4 to 5 months. The Tenant argued however, that he had removed more than 1/3 of his belongings and that many more were packed up and waiting to be removed. The Tenant said he needed more time to remove the belongings given the large volume and a medical condition which prevents him from lifting and consequently he must rely on his outreach worker to arrange for their disposal.

The Tenant denied that he was in breach of any terms of his tenancy agreement as alleged by the Landlord and denied that there was a fire risk. The Tenant said he removed many of the items from the kitchen stove (which was denied by B.L.) and turned off the power to the stove at the breaker. The Tenant said he is a long term resident of the rental property and is motivated to clean up the rental unit so that he can continue to reside there.

### Analysis

I find that clause 8 and 18 of the tenancy agreement are not relevant to this matter in that they do not address the issue of the excessive amount of possessions that the Tenant has stored in the rental unit. While I find that clause 15 and clause 18 of the tenancy agreement are relevant, I find that there is insufficient evidence that these are material terms of the tenancy agreement as they are defined under RTB Policy Guideline #8.

However, I do find on a balance of probabilities that by storing a massive amount of belongings in the rental unit, the Tenant has put the Landlord's property at significant risk. In particular, I find that as of July 31, 2012 (when the Landlord took photographs of the rental unit), there were so many belongings in the rental unit that it could not be inhabited by the Tenant. I also find that this condition placed the rental unit and therefore the rental property as a whole at risk of fire. Although the Tenant argued that he had addressed any risk of fire by cutting off the power to his stove, the Landlord rightly noted that the order of the Fire Department made on August 17, 2012 identified the "*significant amount of materials*" as the source of the fire risk.

Although the Tenant said he is taking steps to remove the large number of belongings, I find that this is not a relevant consideration as s. 47(1)(d)(iii) only requires the Landlord to show that the Tenant **has** put the property at significant risk (and not that he is a continuing risk). In other words, it is irrelevant if the Tenant has now removed some of his belongings in an attempt to comply with the Order of the fire department and address the risk of fire. As a result, I find that there are grounds for the One Month Notice to End Tenancy for Cause dated July 27, 2012 and the Tenant's application to cancel it is dismissed without leave to reapply. The Landlord requested and I find

pursuant to s. 55(1) of the Act that she is entitled to an Order of Possession to take effect on August 31, 2012.

Conclusion

The Tenant's application to cancel the One Month Notice to End Tenancy for Cause dated July 27, 2012 is dismissed without leave to reapply. An Order of Possession to take effect at 1:00 p.m. on August 31, 2012 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: August 28, 2012.

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Residential Tenancy Branch