



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Norcan Management Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: DRI, CNC, MNDC, OLC  
OPC

### Introduction

This hearing was scheduled in response to the tenant's application to dispute an additional rent increase / cancellation of a 1 month notice to end tenancy for cause / a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / and an order instructing the landlord to comply with the Act, Regulation or tenancy agreement. Both parties attended and gave affirmed testimony.

During the hearing the landlord orally requested an order of possession in the event the tenant's application for cancellation of the notice to end tenancy does not succeed.

### Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

In response to an earlier application by the tenant, a previous hearing was held in a dispute between these parties on September 17, 2013. Pursuant to the decision issued by date of September 18, 2013, the landlord's two 1 month notices to end tenancy for cause were set aside. Thereafter, the landlord applied for review of the decision, and by review consideration decision dated October 7, 2013, the landlord's application was dismissed, and the decision of September 18, 2013 was upheld.

In summary, pursuant to a written tenancy agreement the tenancy began on June 1, 2002. A security deposit of \$330.00 was collected on May 22, 2002, and the current monthly rent is documented variously as either \$873.68 or \$873.00.

Subsequent to the last hearing, pursuant to section 47 of the Act which speaks to **Landlord's notice: cause**, the landlord issued a 1 month notice to end tenancy dated September 27, 2013. The notice was served in-person on that same date. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is October 31, 2013. Reasons identified on the notice in support of its issuance are as follows:

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

seriously jeopardized the health or safety or lawful right of another occupant or the landlord

Tenant has engaged in illegal activity that has, or is likely to:

jeopardize a lawful right or interest of another occupant or the landlord

During the hearing the landlord withdrew the second reason identified on the notice. The tenant filed an application to dispute the notice on October 7, 2013.

On September 27, 2013, the landlord also personally served the tenant with a Notice of Rent Increase dated September 27, 2013. A copy of the notice was submitted in evidence. Pursuant to the notice, the current rent of \$873.00 is to be increased by \$150.00 to \$1,023.00 effective February 1, 2014. In his current application the tenant disputes this rent increase.

Finally, the tenant seeks compensation of \$175.00 for an alleged breach of the right to quiet enjoyment. This aspect of the application arises in part out of the landlord's issuance of a 1 month notice to end tenancy for cause within several days of the Branch decision to set aside 2 previous notices issued on the basis of identical grounds. The tenant also takes the position that the landlord acted unreasonably by serving this notice on the same day that a pest control technician attended the unit to conduct an inspection, which itself appears to have been scheduled after the tenant informed the landlord in writing that he had sighted "evidence of bedbugs cockroaches" in his unit; the tenant's letter is dated September 20, 2013 and was sent to the landlord by way of registered mail on September 23, 2013. The Canada Post website informs that the item was "successfully delivered" on September 24, 2013.

### 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)

Based on the testimony and the documentary evidence which includes, but is not limited to, various letters, notices and photographs, the aspects of the tenant's application and my findings around each are set out below.

***Cancellation of a 1 month notice to end tenancy for cause***

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

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or...

Section 55 of the Act speaks to **Order of possession for the landlord**, 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.

I find on a balance of probabilities that the landlord has met the burden of proving entitlement to an order of possession. Specifically, living conditions in the tenant's unit continue to be particularly problematic where it concerns the eradication of pests. For example, the tenant's mattress is located on the floor and clothing is stored in piles on the floor. In a letter dated November 1, 2013, a "lead technician" from a pest control business notes, in part, that a visit to the unit "approximately 4 – 5 weeks ago" was "the fourth time we have treated [the tenant's unit] in less than 2 months, due to the lack of follow up protocol on the part of the tenant." The current notice is the third 1 month notice issued in as many months (July 30, August 30 and September 27, 2013.) I am satisfied that this ongoing problem has contributed to decisions made by at least some former tenants to vacate their units.

Section 68 of the Act addresses **Director's orders: notice to end tenancy**, in part:

68(2) Without limiting section 62(3) [*director's authority respecting dispute resolution proceedings*], the director may, in accordance with this Act,

- (a) order that a tenancy ends on a date other than the effective date shown on the notice to end the tenancy, or...

Following from all the above, the tenant's application to dispute the 1 month notice is hereby set aside, and I find that the landlord has established entitlement to an **order of possession** effective **Tuesday, December 31, 2013**.

### ***Dispute an additional rent increase***

**Part 4** of the Regulation addresses **Rent Increases**. In particular, section 22 addresses **Annual rent increase** and section 23 addresses **Additional rent increase**. In the absence of an application by the landlord for an additional rent increase, I find that the amount of a rent increase which would take effect in 2014 is limited to 2.2%.

While the landlord identified the current rent as \$873.00 on the most recent notice of rent increase, I note that on the previous notice of rent increase dated October 31, 2012, the rent is documented as \$873.68 effective February 1, 2013. Accordingly, I find that the current rent is \$873.68.

As I have issued an order of possession in favour of the landlord effective December 31, 2013, the notice of rent increase is of no effect and it is hereby set aside.

### ***Compensation for alleged breach of the right to quiet enjoyment / order instructing the landlord to comply with the Act, Regulation or tenancy agreement***

In summary, it appears that the tenant considers that the landlord has generally been rude, disrespectful and abusive toward him, both in the nature of his interpersonal contact and in letters / notices. The tenant seeks an order instructing the landlord to inform himself and comply with the provisions set out in section 28 of the Act which speak to **Protection of tenant's right to quiet enjoyment**.

The parties are informed that further to section 28 of the Act, Residential Tenancy Policy Guideline # addresses "Right to Quiet Enjoyment" and cites as examples of such breaches, "persecution and intimidation."

In addition to other matters related to quiet enjoyment, the above Guideline speaks to **Claim for damages**, and provides in part:

An Arbitrator can award damages for a nuisance that affects the use and enjoyment of the premises, or for the intentional infliction of mental suffering.

Having carefully considered the nature of verbal and written contact between the parties, directed specifically from the landlord to the tenant, I find that the tenant has met the burden of proving there has been a breach to his right to quiet enjoyment. Accordingly, I find that the tenant has established entitlement to compensation in the limited amount of **\$150.00**. I order that this amount may be withheld by the tenant from the next regular payment of monthly rent.

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As the end of tenancy nears, the attention of the parties is drawn to section 37 of the Act which addresses **Leaving the rental unit at the end of a tenancy**, and section 38 of the Act which speaks to the **Return of security deposit and pet damage deposit**.

#### Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **Tuesday, December 31, 2013**. 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.

The landlord's notice of rent increase is hereby set aside.

The tenant is ordered that he may withhold **\$150.00** from the next regular payment of monthly rent, as compensation for the breach of his right to quiet enjoyment.

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: November 18, 2013

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Residential Tenancy Branch

