



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

CNC

### **Introduction**

This Hearing was scheduled for December 19, 2013, to hear the Tenant's application to cancel a *One Month Notice to End Tenancy for Cause* issued October 30, 2013 (the "Notice"). At the Hearing on December 19, 2013, the Landlord submitted that the Act does not apply to this tenancy. I heard testimony from both parties with respect to jurisdiction. The matter was adjourned to January 7, 2013, but did not proceed on January 7<sup>th</sup>, and was reconvened on January 8, 2013, for my decision regarding jurisdiction. An Interim Decision was provided on December 20, 2013, which should be read in conjunction with this Decision.

Both parties and their witnesses gave affirmed testimony at the Hearing and the reconvened Hearing.

### **Preliminary Matter**

On December 19, 2013, I heard the following testimony with respect to jurisdiction:

The rental property is a house, divided into separate living quarters. There are two apartments upstairs and the downstairs is shared by 6 occupants, including the Tenant, each with their own rooms. The Tenant and the other occupants share common areas, including the kitchen and bathrooms.

The Landlord rents the whole rental property, with the exception of one of the upstairs apartments, from the owner (the Owner). The Landlord has his wife occupy the other upstairs apartment. The Tenant and five other occupants live in the downstairs living quarters.

The Landlord stated that he pays the Owner full monthly rent in the amount of approximately \$3,700.00 for the downstairs living quarters and his upstairs suite whether or not the downstairs occupants pay him, or whether or not the downstairs living quarters are all occupied.

The Tenant stated that he pays rent to the Landlord, by cheque, and then the Landlord pays the Owner. The Tenant's witness, his father, confirmed that he writes the cheques payable to the Owner and not the Landlord.

The Landlord denied telling the Tenant that he was the Tenant's "landlord". He stated that if rents are paid by the Ministry, then they have to be made payable to the owner of the rental property.

The Owner was not available to give testimony on December 19, 2013. I advised the Landlord that I wished to speak to the Owner and asked that he be made available at the reconvened Hearing, or provide a written statement with respect to his relationship with the Landlord and the Tenant. I also ordered the Landlord to provide a Land Title Search, confirming the Owner's identity.

#### Analysis and decision on jurisdiction:

The Landlord did not provide a written statement from the Owner, nor did the Owner attend the reconvened conference. The Landlord did not provide a Land Title Search.

I advised the parties that I find that I have jurisdiction under the Act. I find that the Landlord is a landlord and the Tenant is his tenant, based on the following reasons:

1. The Act defines a Landlord as, in part: "the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord, permits occupation of the rental unit under a tenancy agreement' or exercises powers and performs duties under this Act, the tenancy agreement or a service agreement." With no evidence to the contrary, I find that the Landlord is the Owner's agent as defined by the Act.
2. The Landlord issued a Notice to End Tenancy, and signed the document as "Landlord or Agent".
3. The Shelter Information that was provided to the Ministry of Social Development and Social Innovation indicates, under "Landlord Information", that the Owner is the owner of the rental property, and that the Landlord is his agent. The Landlord signed this document.

#### Issue to be Decided

Should the Notice be cancelled?

#### Background and Evidence

The Tenant moved into the rental unit in September, 2013. Monthly rent is \$450.00. The Tenant paid a security deposit in the amount of \$225.00 at the beginning of the tenancy.

On October 30, 2013, the Landlord issued the Notice and served the Tenant with the Notice on October 31, 2013. The Notice indicates the following reasons for ending the tenancy:

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

- Significantly interfered with or unreasonably disturbed another occupant or the Landlord;
- Seriously jeopardized the health or safety or lawful right of another occupant or the Landlord; and
- Put the Landlord's property at significant risk.

The Landlord and his witnesses gave the following affirmed testimony:

The Landlord stated that the Tenant is noisy and leaves his television on without being home. He stated that the Tenant disrupts the other occupants by knocking on their doors to borrow things and threatens them. The Landlord stated that the Tenant called the police and accused the Landlord with assaulting him, which the Landlord denied.

The Landlord stated that he is concerned for the safety of all of the occupants in the rental property because twice, before the Notice was issued, the Tenant turned on the stove burner and left the room with the burner still on. On one occasion, the Tenant left a plate on the burner which broke from the heat. The Landlord testified that the Tenant had admitted to him that he left the plate on the hot burner. He stated that the Tenant also turned on the water to the kitchen sink and left the room, causing a flood and damage to the kitchen cupboards.

The Landlord's witness DM has lived at the rental property for five years. He stated that ever since the Tenant moved in, the Tenant has gone out of his way to make life difficult for the other occupants in the rental property by making noise day and night. He stated that the Tenant turned the stove on in October, and then walked away. DM testified that the Tenant left the sink running when he went to his room to answer the phone, thereby causing a flood.

The Landlord's witness CD has lived at the rental property since April, 2013. He testified that he felt harassed by the Tenant because the Tenant would not stop knocking on his door. CD stated that he has told the Tenant that if his door is closed, it means "don't bug me". CD testified that the Tenant is constantly making messes and refuses to clean up after himself.

CD testified that the 6 roommates (including the Tenant) had a meeting to divide up household chores, but the Tenant does not do his share. CD stated that on October 23, 2013, at 2:00 p.m., he came home to find that the Tenant had flooded the kitchen. When CD opened the drawers, he found that they were full of water and one drawer

front fell off. CD stated that prior to the flooding, the drawer stuck a little, but the water warped it.

CD testified that on December 23, 2013, the Tenant left the front burner of the stove on again. CD stated that he scalded his forearm when he reached across the stove to cook something. There were cigarette ashes around the burner. CD stated that the Tenant told him he had turned the stove on.

CD and the other 5 occupants got together and had a group discussion about the issues and concerns they were having with the Tenant. CD typed up a statement, a copy of which was provided in evidence, which he stated all 5 agreed on. 4 of the 5 other occupants signed the statement.

The Landlord asked for an Order of Possession effective January 31, 2014.

The Tenant gave the following testimony:

The Tenant agreed that he had called the police. He testified that the Landlord assaulted him by grabbing him by the neck and holding him against a fence on October 22, 2013. The Tenant stated that the Landlord enters the rental property without notice.

The Tenant stated that the Landlord threw his boots over the fence.

The Tenant testified that CD took \$50.00 from his room when the Tenant was away and that he still owes the Tenant \$8.00. The Tenant denied knocking on the other occupants' doors, with the exception of CD's door, and only for the purpose of asking for the rest of the money he owes.

The Tenant denied leaving the stove burners on and stated that "everyone smokes in that house".

The Tenant agreed that he had accidentally left the water running in the kitchen which caused the flood, but stated that he cleaned it up on his own and that there was no damage.

The Tenant testified that a previous occupant was also threatened by the Landlord, which caused the previous occupant to move out. The Tenant provided a copy of a written statement from the previous occupant.

The Tenant agreed that there was a high level of animosity between him, the Landlord, CD and DM; however, he stated that there was no trouble with the other 3 occupants.

The Tenant submitted that the Notice did not identify him by his name.

The Landlord gave the following reply:

The Landlord denied entering the Tenant's room without notice. He stated that he was allowed in the common areas by the other occupants.

The Landlord stated that the Tenant gave him the wrong last name when he first met him. The Landlord stated that the Tenant was related to a person who was a local celebrity and that the Tenant had used that person's last name. The Landlord stated that he took the Tenant at his word and submitted a copy of the original rent receipt, which was made out to that name rather than the Tenant's last name.

The Tenant responded that he did not give the Landlord the wrong last name.

**Analysis**

I prefer the Landlord's evidence with respect to the parties' submissions regarding the Tenant's last name. I find it improbable that the Landlord would issue a receipt to the Tenant in that name if the Tenant had not told him it was his last name. This raised credibility issues with respect to the remainder of the Tenant's testimony.

Under the provisions of Section 68 of the Act, I hereby amend the Notice to reflect the correct last name of the Tenant.

There is no doubt that there is conflict between the Tenant, the Landlord, and other occupants in the rental property. However, this is not sufficient reason to end a tenancy, which are set out in Section 47 of the Act. A tenancy does not end merely because of personality conflicts. However, based on the testimony of the parties and the witnesses, and the documentary evidence including the written statement of the other occupants, I find that the Landlord has provided sufficient proof on the balance of probabilities that the Tenant has:

- Seriously jeopardized the health or safety or lawful right of another occupant or the Landlord; and
- Put the Landlord's property at significant risk.

I find it probable that the Tenant left the stove burner on and unattended, which is a fire risk, and left the sink running, causing damage to the kitchen. Therefore, I find that the Notice is a valid notice. I dismiss the Tenant's application to cancel the Notice to End Tenancy issued October 30, 2013.

Section 55(1) of the Act states:

- 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.

Further to the provisions of Section 55(1) of the Act, I hereby provide the Landlord with an Order of Possession **effective 1:00 p.m., January 31, 2014.**

### **Conclusion**

The Tenants' application is dismissed without leave to re-apply.

I hereby provide the Landlord with an Order of Possession **effective 1:00 p.m., January 31, 2014.** This Order must be served on the Tenant and 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: January 14, 2014

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Residential Tenancy Branch

