



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, MT, FF, OPC

### Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord identified both tenants as respondents in his application for:

- an Order of Possession for cause pursuant to section 55; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

The female tenant applied for:

- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 66;
- cancellation of the landlord's 1 Month Notice pursuant to section 47; and
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord entered sworn testimony as well as written and photographic evidence that he posted the 1 Month Notice on the tenants' door on December 27, 2013. The female tenant (the tenant) confirmed that the 1 Month Notice was received by the tenants as declared by the landlord. In accordance with sections 88 and 90 of the *Act*, I find that the landlord's 1 Month Notice was deemed served to the tenants on December 30, 2013, the third day after its posting.

The landlord's counsel (counsel) testified that he sent a copy of the landlord's dispute resolution hearing package to the tenants by registered mail on January 16, 2014. The tenant confirmed that she and her son received this package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord's dispute resolution hearing package was deemed served to the tenants on January 21, 2014, the fifth day after their registered mailing.

The landlord confirmed that he received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on February 18, 2014. I find that the tenant served this package in accordance with sections 89 and 90 of the *Act*.

The tenant did not submit any written evidence. She confirmed that she had received a scanned copy of the landlord's written evidence, including two CDs, in time to prepare for this hearing. She said that she could not access one of these CDs of inspections of the rental unit, a video with sound. As the landlord and his counsel had not checked with the tenants beforehand to determine if this video CD could be accessed by the tenants and as I too had difficulty accessing the audio portion of this second video CD, I have not considered this portion of the landlord's evidence. I have considered the landlord's first CD, a collection of photographs of the premises, as the tenant confirmed that she had been able to review the contents of that CD.

At the commencement of the hearing, I clarified that there was no need for the tenant to apply for an extension of time to apply to cancel the 1 Month Notice as her application was filed with the Residential Tenancy Branch (the RTB) on January 7, 2014. The tenant filed her application for dispute resolution within 10 days of the deemed service of the landlord's 1 Month Notice on December 30, 2013. As such, I have not considered her application for an extension of time, as no such extension is required.

#### Issues(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Are either of the parties entitled to recover their filing fees for this application from one another?

#### Background and Evidence

The tenant testified that she first moved into this rental property on or about June 15, 2005, with her son, who was 11 at that time. She testified that she has been out of the country for more than one year, and her son, now 19, has been staying there while she has been abroad. The tenant testified that her original monthly rent was \$520.00, which has increased by now to \$531.00. The landlord testified that monthly rent is \$530.44. The tenant testified that she did not pay the previous owner a security deposit and no such deposit is in place for her tenancy.

The landlord testified that there is no written residential tenancy agreement for this rental unit in a 6-unit rental building he owns. He purchased this property in May 2013.

The tenant said that she was most surprised regarding the reports of the current condition of the rental unit. She testified that she was intending to return immediately to correct any problems that may have occurred in her absence.

The landlord and his counsel provided written and photographic evidence to support their claim that this tenancy should be ended for cause for two basic reasons.

Counsel maintained that the male tenant has let the condition of the rental unit deteriorate to the point where it now presents a fire and health hazard. The photographs were presented to demonstrate that there is definite evidence that the rental unit is being used to hoard many items. These photographs revealed that much of the rental unit is covered in a range of items making it difficult to even navigate the floor area of the rental unit. Counsel who participated in both inspections of the rental unit on November 14, 2013 and December 24, 2013 said that the rental unit is very unsanitary, flies are everywhere, decaying food is abundant, feces remains in the toilet, the premises smells awful and the rental unit presents a significant fire hazard due to the hoarding of materials there. Counsel testified that the male tenant participated in the November 14, 2013 inspection. Counsel presented written evidence that a warning letter was provided to the male tenant shortly after the first monthly inspection on November 14, 2013. Counsel and the landlord testified that there was no improvement when they returned to conduct a scheduled reinspection of the premises on December 24, 2013. By that time, the male tenant had attempted to prevent their entry into the premises by revising the locking mechanism so as to bar the landlord's entry. Counsel and the landlord submitted additional photographs of the condition of the rental unit on December 24, 2013.

The second reason for the landlord's 1 Month Notice was a concern that the male tenant has been significantly disturbing other tenants in this building. The landlord entered written evidence from a number of tenants or former tenants in this building, who maintained that the male tenant knocked on their doors sometimes as late as 1:00 a.m. asking for money or cigarettes. In their written evidence, these tenants stated that the male tenant walks around the rental unit in the middle of the night playing music or turning the television on loudly. The landlord testified that he has lost two tenants as a result of the disruptive activities of the male tenant. One of these tenants moved out in early October 2013 and the landlord had to move another tenant to another property he owns as a result of the male tenant's actions. The landlord and his counsel also provided a copy of a letter to the male tenant asking him to stop disturbing his neighbours, a warning letter that they said had little effect.

Although the tenant has not been in the country for over one year, she said that she left an agent in charge of her tenancy and the landlord should have been raising any concerns he had about the tenancy with that agent. The landlord testified that when he raised his concerns with the female tenant's agent, he was told that the agent was only mandated to pay monthly rent and nothing else. The tenant said that she was most surprised to learn of the state of affairs in this rental unit. She testified that she had told her son that he can no longer live there and he is now living with his father. The tenant testified that she was planning to return to British Columbia within the next few days to clean up the rental unit so that she could resume her tenancy. The tenant said that she was uncertain as to whether the conditions noted in the photographs were taken in the rental unit and whether they accurately reflected those conditions.

### Analysis

The landlord entered into written evidence a copy of his 1 Month Notice requiring the tenants to end this tenancy by January 31, 2014. In that Notice, the landlord cited the following reasons for ending this tenancy pursuant to the following portions of section 47 of the Act:

**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*

*(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*

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

*(iii) put the landlord's property at significant risk;...*

*(f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;*

*(g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) [obligations to repair and maintain], within a reasonable time;*

*(h) the tenant*

*(i) has failed to comply with a material term, and*

*(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;...*

I find that the landlord and his counsel have provided compelling eyewitness accounts, supported by photographic evidence, to demonstrate that the tenants have failed to remedy serious health and safety concerns raised by the landlord that put the landlord's rental property at significant risk. The photographs reveal that the tenants have allowed the rental unit to fall into a truly appalling condition, a condition that could easily attract pests and insects that could affect other tenants in this rental property. While the horrible condition of the rental unit alone would justify an end to this tenancy, the landlord has also provided undisputed written evidence and sworn oral testimony that the male tenant has been seriously interfering with and disturbing other tenants in this rental property to the point where the landlord has lost a tenant and had to find other accommodations for at least one other tenant.

By contrast, the tenant has no direct knowledge of the state of affairs of this rental unit and has not even been there for the past year. She did not produce any written or photographic evidence, nor did she produce witnesses who could attest to a different account of her son's interactions with other tenants in this building or with respect to the current condition of the rental unit.

On a balance of probabilities, I find that the landlord had ample reason to issue the 1 Month Notice when the condition of the rental unit did not improve after the landlord notified the male tenant that the rental unit needed to be restored to an acceptable level of cleanliness and safety following the November 14, 2013 inspection. The landlord gave the tenants over a month to remedy this situation and little if any improvement occurred. I also find that the landlord has provided sufficient evidence to warrant ending this tenancy on the basis of the male tenant's significant interference with and disturbance to the other tenants in this rental unit.

As discussed at the hearing, I dismiss the tenant's application to cancel the 1 Month Notice and issue an Order of Possession to the landlord to take effect by 1:00 p.m. on April 1, 2014. This delay in the timing of the Order of Possession is provided so that the female tenant can return to the rental unit, clean the rental unit and remove her belongings and those of her son from the premises.

As the landlord has been successful in this application, I issue a monetary Order in the landlord's favour in the amount of \$50.00 to enable him to recover his filing fee from the tenant. I dismiss the tenant's application to obtain the recovery of her filing fee as she has been unsuccessful in her application.

Conclusion

I dismiss the tenant's application to cancel the landlord's 1 Month Notice. The landlord is provided with a formal copy of an Order of Possession effective by 1:00 p.m. on April 1, 2014. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: March 04, 2014

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Residential Tenancy Branch

