



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 0707892 BC Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for an order cancelling a notice to end tenancy for cause.

The tenant and an agent for the landlord company attended the conference call on the first scheduled date of the hearing. During that hearing it was determined that the landlord had submitted evidence to the Residential Tenancy Branch and to the tenant, but I did not have the evidence. The matter was adjourned to the following day, and the evidence was received. Both parties attended again, each gave affirmed testimony, and the parties also agree that the landlord has received the tenant's evidence.

The parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

### Issue(s) to be Decided

Should the notice to end tenancy for cause be cancelled?

### Background and Evidence

The landlord testified that this fixed term tenancy began on September 1, 2004, expired on February 28, 2005 and then reverted to a month-to-month tenancy. The tenant still resides in the rental unit. Rent in the amount of \$520.00 per month is currently payable in advance on the 1<sup>st</sup> day of each month and there are no rental arrears. The landlord collected a security deposit from the tenant in the amount of \$225.00 on August 15, 2004 which is still held in trust by the landlord.

The landlord's agent further testified that a 1 Month Notice to End Tenancy for Cause was issued to the tenant on February 25, 2014 by posting it to the door of the rental unit. A copy of the notice has been provided, and it is dated February 24, 2014 and contains an effective date of vacancy of March 31, but no year. The reasons for issuing the notice are:

- 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 caused extraordinary damage to the unit/site or property/park.

The landlord's agent further testified that the tenant has been doing some target practice inside the rental unit with a BB gun. On February 8, 2014 around midnight a BB hit a sprinkler head in the rental unit and a flood occurred. The apartment complex contains 60 apartments over 4 floors, and there are 15 rental units per floor. The tenant lives on the top floor and the flood affected several units, 6 of which had to be vacated. All of those tenants signed Mutual Agreements to End the tenancy over the next 2 weeks. The tenant told the landlord's agent that he was shooting a target and the BB ricocheted onto a glass vile on the sprinkler head. The sprinkler and alarms activated and the fire department arrived. The fire department folks turned the water off and told the landlord's agent to call a restoration company. The landlord's agent and the tenant cleaned up what they could for the night.

Numerous pages of invoices and emails have been provided which set out the costs for repairs to the building. The work has been set out in a document made by the restoration company entitled "Repair Specification," and is dated March 7, 2014. The document sets out repairs to specific areas of the building including the rental unit, the next door unit, the common hallway between those 2 units, the stairwell landing, the stairwell going to the floor below consisting of 14 stairs and a landing, more landings, stairs and rental units from the 5<sup>th</sup> floor down to the ground floor, entrance lobby area, and manager's office.

The owner of the building requested the landlord's agent to issue the notice to end tenancy for extraordinary damage to the rental unit and disturbance of other tenants who had to vacate their rental units, some permanently.

The tenant testified that the water ran for about 7 minutes and went right out of the building. No damage was done. An insurance adjuster went through the rental unit and said he couldn't tell the source of the flood. Further, the tenant saw the exposed wood

and insulation in the hall and common areas, and there was no water damage. The gyprock was rock solid. The building is cold, contains black mold, has little or no heat, and stating that all the moisture issues were caused by the tenant is not true. Further the entire building is in need of repair.

The tenant also testified that he has extensive experience with BB guns and provided a document outlining what precautions he took to prevent ricocheting.

### Analysis

Where a tenant disputes a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove the notice, which may include the reasons for issuing it. I have examined the notice to end tenancy and I find that it is in the approved form, but does not contain a full effective date of vacancy. The *Act* states that if served by posting it to the door of the rental unit, the notice is deemed to be served 3 days later. The landlord's agent testified that it was posted on February 25, 2014, and I find that it was deemed to have been served on February 28, 2014. The *Act* also states that incorrect effective dates contained in a notice to end a tenancy are changed to the nearest date that complies with the *Act*, which I find is March 31, 2014, being one month after the date the notice was served, and is the day before the day in the month that rent is payable under the tenancy agreement.

The *Act* permits a landlord to issue a notice to end tenancy for extraordinary damage to a rental unit or property or for unreasonably disturbing other occupants. The landlord has provided numerous invoices for repairs and renovations to the building. Of particular notice is the 11 page document from the restoration company. The tenant testified that the water ran for about 7 minutes, and the landlord's agent did not dispute that testimony. The tenant also testified that the building is cold, damp, and contains holes everywhere, which is also undisputed by the landlord's agent. The tenant also testified that the wood, insulation and gyprock that he saw exposed showed no water damage.

The issue before me is whether or not the landlord has established cause to end the tenancy because the tenant has caused extraordinary damage to the rental unit and unreasonably disturbed other occupants. The tenant has provided a 6 page document prepared by himself which includes statements of the expertise the tenant has with firearms of all kinds and what precautions he took to ensure that his hobby was safe. He also testified that the precautions were in place to ensure safety on this occasion.

In order to end the tenancy for cause, the landlord must be able to establish some wrong doing by the tenant that would satisfy the director that the tenant has failed to

comply with the *Act* or the tenancy agreement, and that the wrong-doing caused extraordinary damage to the property. In this case, the landlord has not alleged any wrong-doing, just that the damage occurred.

In the circumstances, I am not satisfied that the landlord has established that this incident was any more than an accident that could have happened just as easily by a child playing with a ball in the rental unit. The incident is not alleged to be a crime, the landlord has not established that the tenant has breached the *Act* or the tenancy agreement, and the other occupants who were displaced would have been by any other accident. I find that the incident was an accident which was not deliberate or negligent. The notice to end tenancy is hereby cancelled.

### Conclusion

For the reasons set out above, the notice to end tenancy issued on February 24, 2014 is hereby cancelled and the tenancy continues.

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: April 30, 2014

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Residential Tenancy Branch

