



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Coast Property Management  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes MT, CNC, FF

### Introduction

This hearing dealt with an application by the tenant for an order setting aside a 1 Month Notice to End Tenancy for Cause and an order granting her more time in which to file that application. Both parties appeared and had an opportunity to be heard.

### Issue(s) to be Decided

Does the landlord have cause, within the meaning of the *Residential Tenancy Act*, to end this tenancy?

### Background and Evidence

This month-to-month tenancy commenced February 15, 1995. At the beginning of the tenancy the rent, which is due on the first day of the month, was \$750.00. As of the date of the hearing the monthly rent is \$810.00.

On May 28, 2014 the landlord issued and served a 1 Month Notice to End Tenancy for Cause. The reason stated on the notice was that the tenant has caused extraordinary damage to the unit. The effective date of the notice was June 30, 2014.

The tenant filed this application on June 4, 2014.

The landlord testified that when they inspected the unit they noted that the home was very unclean, there was excessive mold on the shower doors, the cat litter box was overflowing, and there appeared to be animal feces in the carpet. The landlord did not file any photographs or any other material in evidence.

The landlord testified that the rental unit was at least twenty years old. He acknowledged that very little maintenance had been done since 1995 but added that there had not been any particular requests for maintenance from the tenant.

The July rent was paid by automatic deduction from the tenant's account. No receipt or other acknowledgement of the payment was made by the landlord.

The tenant did file eight photographs of the interior of the rental unit. They show a dwelling that needs a good cleaning and appears to be worn out. The tenant testified that the unit has never been painted during her entire tenancy. The vinyl floor in the kitchen (which according to the depreciation schedule contained in Residential Tenancy Policy Guideline 40: Use Life of Building Elements has an expected useful life of ten years) is so worn there is no pattern left in the most travelled areas and chunks are missing completely. Parts of the kitchen cabinets appear to be worn down to bare wood. The other photographs show areas that require maintenance.

At some point in the recent past the landlord suggested that the tenant move into the lower unit of this house so the rental unit could be renovated. The tenant, for various reasons, declined that offer. It was after that discussion that the landlord served this notice to end tenancy on the tenant.

#### Analysis

As the tenant filed her application for dispute resolution within ten days of receiving the notice to end tenancy, an order extending the time for filing is unnecessary.

As explained in *Residential Tenancy Fact Sheet 124: Re-instatement of Tenancies*:

“Where a landlord has served the tenant with a One-Month Notice to End Tenancy, and then accepts a rent payment for the month after the tenancy was to end, the landlord should clarify with the tenant whether they have reinstated the tenancy.

When a landlord does not want the tenancy to continue, the landlord should:

1. Specifically tell the tenant that the rental payment is being accepted for the use and occupancy only and does not reinstate the tenancy; and,
2. Tell the tenant that they must move out, as required by the Notice to End Tenancy.”

The landlord did accept the rent for July and did not do anything to communicate to the tenant that the payment was being accepted for use and occupancy only. Accordingly, I find that the landlord did re-instate the tenancy and the 1 Month Notice to End Tenancy for Cause dated May 28, 2014, is set aside and is of no force or effect.

Even if the landlord had not re-instated the tenancy by accepting the July rent I would have granted the tenant's application. On applications such as this the onus is on the

landlord to prove, on a balance of probabilities, the grounds stated on the notice to end tenancy. The evidence only established that the rental unit is showing twenty years of wear and tear, only occasionally interrupted by some maintenance, routine or otherwise.

The landlord is reminded of two things:

- Its' statutory obligation pursuant to section 32(1) to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law; and, having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.
- The decision of the British Columbia Court of Appeal in *Amacon Property Management* that defines the circumstances in which a landlord may require a rental unit to be vacant for the purpose of renovation.

As the tenant was successful on her application she is entitled to reimbursement from the landlord of the \$50.00 fee she paid to file the application. Pursuant to section 72 this amount may be deducted from the next rent payment due to the landlord.

#### Conclusion

The 1 Month Notice to End Tenancy for Cause dated May 28, 2014 is set aside and is of no force or effect.

The tenant may deduct the \$50.00 she paid to file this application from the next rent payment due.

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: July 24, 2014

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Residential Tenancy Branch

