



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes            OPC, FF, CNC

### Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the one month Notice to End Tenancy was personally served on the Tenant on June 11, 2014. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by the landlord was personally served on the Tenants on June 25, 2014. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the one month Notice to End Tenancy dated June 11, 2014?
- b. Whether the landlord is entitled to an Order for Possession?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

### Background and Evidence

The rental unit was initially rented to NM in 1999. NM is presently over 80 years of age and is in poor health. The tenant paid a security deposit of \$292.50 at the start of the tenancy. On November 15, 2006 the landlord entered into a tenancy agreement in writing with NM and her son BM who is approximately 60 years old. The present rent is \$798 per month payable in advance on the first day of each month.

The Notice to End Tenancy dated June 11, 2014 relies on the following grounds of termination:

### Grounds for Termination

The Notice to End Tenancy relies on section 47(1)(d) of the Residential Tenancy Act. That section provides as follows:

Landlord's notice: cause

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

...

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

(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;

The landlord seeks to end the tenancy on the basis that the tenants have allowed the rental unit to fall into an extreme state of uncleanliness that it is putting the landlord's property at significant risk.

Briefly the relevant evidence of the landlord is as follows:

- The landlord has been concerned about the condition of the rental unit for a long time. However, they have been reluctant to do anything because of the age of the female tenant. The female tenant refused to give the landlord access to the bedroom inhabited by her son.
- On March 17, 2014 the landlord gave the tenant a Notice stating their concerns about not being given access to the bedroom for inspection purposes and informing her that they expect to be given access during the next inspection. It also states "Please attend to the cleanliness of your suite. If the cleanliness of your suite has not been dealt with upon next inspection we will have no other alternative as Landlords but to issue you an eviction notice..." The Notice goes on and advises what the landlord views as acceptable standards and ends stating that if the unit is not in an acceptable standard will result in eviction proceedings.
- The landlord conducted an inspection on June 10, 2014 and discovered the rental unit smelled terribly and had considerable clutter. Again the tenant would not give the landlord access to the bedroom. They discovered rotten food and flies etc. They also viewed the bedroom through the window from the balcony and were shocked to see garbage bags throughout.
- After leaving the rental unit they called the police and social workers who attended. The social workers attended the next day and removed some of the garbage and rotten food. However, the male tenant was seen in the dumpster going through the garbage bags and retrieving some of the goods that had been thrown. The male tenant testified he was retrieving a package of strawberries and yogurt that were in cases.
- The landlord became extremely concerned about the condition of the unit and the extreme filth.
- A Pest control company did an inspection on June 13, 2014. The report states he found cockroaches, mouse feces, cobwebs and spiders. There was a strong smell of spoiled food in the kitchen. The report also talks about the extreme filth in the rental unit.
- The Health and Safety Manager also did an inspection on June 13, 2014. He testified he is qualified conduct mold and asbestos inspection. He is a construction safety officer and has taught occupational health and safety at BCIT for the last 5 years. He testified as to the extreme health hazard the rental unit exhibits to company employees and the tenants. His letter dated June 13, 2014 included the following statement:
  - The tenants' living condition have been deemed to be IDLH (Immediately Dangerous to Life and Health) to both occupants of the unit as well as neighboring tenants and possibly the entire building.
  - There are obvious accumulated health hazard, fire hazards, sub standard sanitary conditions as well as possible damage to structure due to discarded organic debris (trash), mold and dirt.
  - "This is a textbook case of severe filth that has led to rats, mice, rodent feces, human feces, spoiled food, spiders, cockroaches, rat nests, fire access/egress

issues due to debris accumulation as well as organic food scraps and trash strewn-about the bedroom

- All employees must wear the required PPE as outlined in OHSR (booties, respirators with organic vapour cartridges, Tyvek suites and disposable latex gloves and goggles)
- He recommended that the suite be cleared on all debris and belongings and a complete decontamination and remediation of the suite would be required.
- The Health and Safety Inspector did another inspection of the rental unit on June 30, 2014. His report acknowledges the tenants have cleared 'some' walking room in the hallways and bedroom. However the overall sanitation of the unit has not changed whatsoever and is evident behind fixtures, behind piles of clothes and boxes and behind furniture. His recommendation that the suite be cleared on all belonging and there be a complete decontamination and remediation of the unit was the same as his previous letter dated June 13, 2014.
- The landlord produced a number of photographs which support their oral testimony as to the extreme uncleanliness in the rental unit. Some of those photographs were taken at the time of the initial inspection and some were taken at the end of June.
- The Building Manager also did an inspection at the end of July and she testified that while some clutter was removed, the unacceptable condition of the rental unit remained. She also produced photographs to support her testimony.

The landlord applied for an early end of the tenancy which was heard by an arbitrator on July 3, 2014. The tenants did not appear for the hearing although the arbitrator determined the tenants and their agent had been properly served. The arbitrator granted the landlord's application for an early end to the tenancy and determined the landlord was entitled to an Order for Possession. The tenant filed an application for review of that decision and a hearing was set for August 15, 2014.

Briefly the evidence presented by the tenant is as follows:

- The male tenant conceded there was a problem that needed to be dealt with and that he had neglected to maintain proper cleanliness. However, he testified he has sufficiently cleaned the rental unit.
- He testified he has thrown out garbage and debris and has washed walls and windows.
- He was in the dumpster on June 11, 2014 to retrieve good food (container of strawberries and yogurt) that the social workers should not have thrown out.
- He has cooperated with the landlord.
- He acknowledged that his mother is in hospital and she is waiting to be provided with a form of assisted living. However, he talks to her on a daily basis and she would prefer to return to the rental unit with him.
- If the rental unit is not satisfactory he will continue to work with the landlord to improve it.
- The landlord has used heavy handed tactics and not given proper notice.

### Analysis

After carefully considering all of the evidence I determined the landlord has presented sufficient evidence to establish sufficient cause to end the tenancy. Section 32(2) of the Residential Tenancy Act which is incorporated into all tenancy agreements provides as follows:

### **Landlord and tenant obligations to repair and maintain**

- 32 (2)** A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

Paragraph 12 of the tenancy agreement provides "The tenant must maintain ordinary health, cleanliness and sanitary standard throughout the residential premises and residential property." I determined that these terms are material to the tenancy agreement. Further, I determined the tenants have failed to comply with these terms by failing to maintain reasonable health, cleanliness and sanitary standards. Further I determined the letter of March 17, 2014 is written notice and that the landlord has given a reasonable period of time to rectify the breach by giving the tenants the opportunity to clean up to the next inspection which occurred over 2 months later. As a result I determined the landlord has establish sufficient grounds to end the tenancy on the basis the tenants have failed to comply with a material term of the tenancy agreement and have failed to rectify the situation within a reasonable time after being given written notice by the landlord.

Further, I determined the landlord has sufficient cause to end the tenancy on the basis that the tenants have put the landlord's property at significant risk. The evidence referred to above is more than sufficient to support the Notice to End Tenancy.

The tenant submits he has adequately cleaned the rental unit. He has failed to present sufficient evidence to support this allegation. In any event the issue is whether there is sufficient grounds to end the tenancy at the time the Notice was served which was June 11, 2014. I find the landlord has sufficient cause to end the tenancy on that date. Further, I find as a fact the health, cleanliness and sanitary standards has not significantly changed since that date.

Tenant's Application:

As a result I dismissed the tenant's application to cancel the one month Notice to End Tenancy dated June 11, 2014.

Landlord's Application - Determination and Orders

I determined that the landlord has established sufficient cause to end the tenancy.

The rent has been paid for August. I order that the tenancy shall end on August 31, 2014. As the landlord has been successful I order that the tenant pay to the landlord the sum of \$50 for the cost of the filing fee such sum may be deducted from the security deposit.

**I granted an Order for Possession effective 1:00 p.m. on August 31, 2014.**

The tenants must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

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: August 13, 2014

