



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

Dispute Codes      CNC, FF

### 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 and to recover the filing fee from the landlord for the cost of the application.

An agent for the landlord company attended the hearing with an observer, who did not take part in the proceedings, and with the consent of the tenant, and the landlord called one witness. The tenant also attended with legal counsel. The parties and the witness each gave affirmed testimony and the parties were given the opportunity to cross examine each other and the witness 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

Has the landlord established that the notice to end tenancy was issued in accordance with the *Residential Tenancy Act*?

### Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on April 1, 1997 and the tenant still resides in the rental unit. Rent in the amount of \$650.00 per month is payable in advance on the 1<sup>st</sup> day of each month and there are no rental arrears. A copy of the tenancy agreement has been provided which specifies a security deposit in the amount of \$272.50.

The landlord's agent further testified that on August 22, 2014 the landlord caused the tenant to be served with a 1 Month Notice to End Tenancy for Cause by posting it to the door of the rental unit on that date. A copy of the notice has not been provided however

the landlord's agent testified that it is dated August 22, 2014 and contains an expected date of vacancy of September 30, 2014. 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
  - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord
  - Put the landlord's property at significant risk
- Tenant has engaged in illegal activity that has, or is likely to
  - adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
  - Jeopardize a lawful right or interest of another occupant or the landlord.

The landlord's agent further testified that on July 30, 2014 at 9:45 p.m. the building manager received a call from a new tenant of the same building, who had just moved in earlier that day that someone had broken into her unit, some belongings were missing and the fridge had been replaced with a much older, dirtier fridge. The building manager called the landlord's agent to advise of the report, and the landlord's agent asked the building manager to inspect each unit. Each tenant in the area of the complex was given written notice to inspect on August 1, 2014. The landlord's agent conducted the inspection on the tenant's rental unit and located the fridge inside. The tenant was not at home, but his girlfriend was there who said she knew nothing about it and to talk to the tenant. The landlord's agent took photographs of the fridge in the tenant's unit.

The landlord's agent then spoke to the tenant who at first denied taking the fridge, and when told that the fridge in question was in his rental unit and the serial number was checked and confirmed, he admitted it saying that the door to that rental unit was wide open and the tenant had been asking for a new fridge for many months so he took it. He asked to not be evicted.

The landlord's agent further testified that the rental complex is a crime free housing complex and there is no tolerance for any crime.

The landlord has also provided a receipt dated August 8, 2014 showing that the stolen fridge was replaced. Also provided are photographs and the landlord's agent testified that the fridge that had been in the tenant's rental unit is the same fridge that was left in the other unit. He stated that it is very dirty and older. The one that was in the other rental unit was inspected that morning by the building manager and the new tenant. It was not new, but refurbished and clean. The RCMP were called and investigated but

they were not able to determine those responsible and their file was concluded. The landlord's agent testified that he was unable to provide proof of the theft until this hearing is completed, adding that he has not laid charges of theft and doesn't believe that he has to; the tenant admitted in front of others that he had taken the fridge. There have not been any complaints about the tenant in the last 17 years of the tenancy. To the best of his knowledge, the landlord's agent is not aware of the tenant's fridge being replaced, but certainly not within the last 5 years.

The landlord's witness is the building manager, and testified that there are 107 rental units within the rental complex.

The witness issued a notice to end tenancy to the tenant when a new tenant in another unit called the witness about 9:30 p.m. asking why her fridge was replaced with an older dirty fridge. The witness went to that rental unit and the fridge was not the fridge that had been there at 11:00 a.m. that morning when the witness conducted an inspection of that unit. They both inspected the unit in the morning and the unit was 100% ready for move-in with a newer looking fridge. The witness told the tenant to check her key, it worked and they walked away. On July 31, 2014 the maintenance person replaced the deadbolt on the unit because the tenant didn't feel safe.

The witness contacted the landlord's agent, and then gave notice to tenants in surrounding units to inspect.

The RCMP were called and an officer took some information and the witness ordered a new fridge to replace the old, dirty one.

On August 1, 2014 the suite inspections were conducted and the fridge that had been in the other unit was located in the tenant's rental unit. She further testified that the old, dirty fridge had clear outlines of fridge magnets that stood right out. The witness also checked with the distributor and the newer fridge was replaced in August, 2012 which is recorded in permanent marker on the back of it – that fridge is now in the tenant's rental unit. No such markings seem to appear in the photographs provided by the landlord.

The witness served another notice to inspect the tenant's rental unit scheduled for August 4, 2014. The witness arrived around noon and the person in the rental unit denied knowing anything and told the witness to talk to the tenant. The witness took photographs, and shortly thereafter received a phone call from the tenant asking why he was being accused. The witness put the call on speaker and the landlord's agent was present. The tenant denied taking the fridge at first, but finally admitted to it saying that his fridge is old, and repeated requests to please not take legal action or evict the tenant. She testified that there is a serial number on the back of the fridge and it was

going to be confirmed, but at that time the witness did not have the serial number or any record of the serial number being tracked. However, a discussion to that effect did take place, leading the tenant to admit to taking it.

Around 3:00 p.m. the witness went to run errands and received another call from the tenant on speaker in the witness' vehicle and the tenant admitted to taking the fridge again. He apologized and stated that he should have just asked for a new fridge, but the conversation only surrounded the fridge, not any other missing items from the neighbouring unit.

The witness further testified that if a tenant leaves a fridge dirty, it is the witness who is employed by the landlord to clean it and the witness recognized the fridge. The witness was in the unit that the fridge was taken from many times for showings and definitely recognized it in the tenant's rental unit.

The tenant testified that he did not steal the fridge, and he did not confess to that. The fridge that is presently in the rental unit was brought to the rental unit a year or two before the landlord's witness started working there by the previous property manager. The tenant hasn't had any problems with his fridge, and denies that there are any dates written in black permanent marker on the back of it.

The tenant also testified that he did not speak to the landlord's agent or the landlord's witness on August 4, 2014; the tenant had gone away for the long weekend and returned on the Monday evening around 6:00 p.m. and had no reason to call anyone that day.

### Analysis

Where a tenant disputes a notice to end a tenancy when issued by a landlord, the onus is on the landlord to prove the validity of it, which can include the reasons for issuing it.

In this case, the landlord's agent and the landlord's witness both testified that the tenant admitted to taking the fridge from another rental unit because his was old and needed to be replaced. The tenant denies that he ever admitted to it.

The landlord's witness testified that when tenants leave rental units, it is up to her to clean the fridges. She also testified that she had been in the other unit many times while showing it and would definitely recognize the fridge. She also gave some specific testimony about how she recognized it, such as by the outlines of fridge magnets that

she had seen on the older fridge when it was in the tenant's rental unit. None of that testimony was disputed by the tenant.

In the circumstances, I accept the testimony of the landlord's agent and the landlord's witness.

However, I do not have a copy of the notice to end the tenancy and therefore, I have no evidence before me that the notice was issued in the approved form or that other pertinent information required by the *Act* is on it, and therefore, I find that the landlord has failed to establish that the landlord has issued it in accordance with the *Residential Tenancy Act*. Therefore, I cancel the notice.

Since the tenant has been successful with the application, the tenant is also entitled to recovery of the \$50.00 filing fee, and I order the tenant to reduce rent by that amount for a future month as recovery.

### Conclusion

For the reasons set out above, the notice to end tenancy is hereby cancelled and the tenancy continues.

I hereby order the tenant to reduce rent by \$50.00 for a future month as recovery of the filing fee.

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: October 31, 2014

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Residential Tenancy Branch

