



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Brown Brothers Agencies Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC FF

### Introduction

This hearing dealt with the tenant's application to cancel a notice to end tenancy for cause. The tenant, two witnesses for the tenant and three agents for the landlord participated in the teleconference hearing.

### Preliminary Issues

#### *Service of Evidence*

The tenant stated that he had personally served evidence on an agent of the landlord on week before the hearing. The agent of the landlord stated that the tenant did give her the documents, but he did not say it was evidence for the hearing. The landlord also stated that the evidence was served late. I found that the landlord was served with the evidence and I admitted it as evidence. I informed the parties that if, during the hearing, the landlord indicated that they needed further time to submit evidence in response to the tenant's evidence, I would then consider whether an adjournment was necessary. The landlord made no such indication during the hearing.

The tenant expressed a concern regarding the legality of the landlord's photographic evidence, as they took the pictures without the tenant's consent and when he was not present. The photographs depict merely inanimate objects in the rental unit and were taken in conjunction with the landlord investigating and addressing the flood in the unit. I find that there is no indication that the photographs were taken illegally, and I therefore admit them into evidence.

Both parties were given full opportunity to give testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Issue(s) to be Decided

Is the notice to end tenancy valid?

If so, is the landlord entitled to an order of possession?

Background and Evidence

On October 14, 2014 the landlord served the tenant with a notice to end tenancy for cause. The notice indicated the reason for ending the tenancy was that the tenant put the landlord's property at significant risk.

*Landlord's Evidence*

The landlord stated that there was a flood in the tenant's unit, which resulted in water leaking into the unit below and causing the ceiling to come down in that unit.

The landlord's evidence indicated that they brought in a carpet cleaning professional, who extracted water, removed the carpet underlay, sanitized the carpet and left a dehumidifier and fan on to dry the carpet. The landlord's agent DW stated that she returned to the rental unit with the carpet cleaning technician two days later, and discovered the fan and the dehumidifier in the hallway of the building. DW stated that the tenant told her and the technician that he had already taken care of the problem, and he refused them entry into his unit. The technician submitted his opinion that without proper ventilation from the dehumidifier and fan, the wall and carpet were at high risk of having mold and mildew problems.

In the hearing the landlord orally requested an order of possession effective January 15, 2015.

*Tenant's Response*

The tenant stated that he purchased and installed a new showerhead after he told the landlord about the old broken one. The tenant stated that he did not know that there was a problem with the new showerhead, but it was a little loose. The tenant stated that the new showerhead is fairly large and pumps out a lot of water. The tenant stated that on the date of the flood he turned on the shower to warm up the room but he then heard screaming outside his unit and went to investigate. The tenant stated that he was away from the bathroom for three to five minutes, and when he came back he discovered the flooding.

The tenant stated that he was very upset about the flooding, and as a result of the incident and the tenant's medical conditions he went to the hospital that evening and did not return to his unit until the following evening. The tenant stated that when he returned to his unit the dehumidifier and fan were running. The tenant stated that after letting them run all night, he turned them off and put them out in the hallway. The tenant stated that he and his mother then cleaned up.

The tenant's mother, BH, and his father, AH, appeared as witnesses in the hearing. BH stated that the carpet in the unit was grungy-looking at the beginning of the tenancy. BH stated that the tenant was keeping his clothes on the floor, and when she was helping the tenant clean up, the clothes had not dried out and were mildewy. AH stated that the carpet in the unit should have been replaced before the tenancy began.

In regard to whether the tenant refused entry to his unit, he first stated that he did not refuse entry to anyone. Later in the hearing, the tenant acknowledged that he did speak to the landlord's agent MH, and he recalled telling her that he had taken care of the situation and it was dry. The tenant stated that he was not trying to be difficult, and it was an accident.

### Analysis

As a preliminary note, I found the photographic evidence of both parties to be of no evidentiary value in reaching my decision in this matter. Therefore, although I allowed this evidence, I did not consider it.

I find that the notice to end tenancy is valid.

The tenant put the landlord's property at significant risk by carrying out unauthorized plumbing and then negligently allowing the water to cause flooding. Moreover, the tenant put the landlord's property at further risk by interfering with the landlord's efforts to properly address the issue. The tenant is not a carpet cleaning professional, and he could not verify whether the carpet, underlay and floor were sufficiently dry to prevent mildew or mold. I therefore dismiss the tenant's application.

Section 55 of the Act states that when a tenant applies to cancel a notice to end tenancy and the application is dismissed, if the landlord orally requests an order of possession in the hearing then the order of possession must be granted. In the hearing, the landlord orally requested an order of possession. Accordingly, I grant the landlord an order of possession.

As the tenant's application was unsuccessful, he is not entitled to recovery of the filing fee for the cost of his application.

### Conclusion

The tenant's application is dismissed.

I grant the landlord an order of possession effective January 15, 2015. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order 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: December 2, 2014

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Residential Tenancy Branch

