



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding IMPERIAL APARTMENTS  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      CNC, MNDC, OLC, O, OPC, FF

### **Introduction**

This hearing dealt with applications from both the landlords and the tenant under the *Residential Tenancy Act* ("the *Act*"). The tenant named Landlord BM and HAH as Respondents in his application for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause ("the 1 Month Notice") pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- and other relief to be specified at the hearing.

Landlord BM and the corporate landlord identified above ("**the landlords**") applied for an Order of Possession pursuant to section 55 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions.

### **Preliminary Matters: Service of Documents and Adjournment Request**

Service of Documents: Landlord BM, who identified himself as the agent for all of those identified as landlords in the two applications ("the landlord") testified that the 1 Month Notice was personally served to the tenant on November 25, 2014. The landlord testified that the landlords' Application for Dispute Resolution package was personally served to the tenant on December 16, 2014. The tenant confirmed receipt of both the 1 Month Notice and the Application for Dispute Resolution package. Pursuant to sections 88 and 89 of the *Act*, I find the tenant duly served with these documents and the landlords' written evidence as declared by the landlord.

The landlord testified that they did not receive an Application for Dispute Resolution from the tenant and were unaware of his application. The tenant testified that he did not serve the landlords with his Application for Dispute Resolution package. Given the testimony of both parties, I find that the landlords have not been served as required under section 89 of the *Act* and further that the landlord has not been properly notified of the tenant's application and claims filed by the tenant.

Adjournment Request by Tenant: The tenant testified, as above, with respect to failing to serve the required documents to the landlords to proceed with his application. Based on this lack of service precluding him in proceeding with his application, the tenant sought an adjournment to attempt to properly serve the landlords.

An applicant can apply at or before the hearing of their Dispute Resolution Hearing for an adjournment pursuant to Rule 6 of the Residential Tenancy Branch Rules of Procedure. The rules state that the "Residential Tenancy Branch will reschedule a dispute resolution proceeding if written consent from both the applicant and the respondent is received by the Residential Tenancy Branch before noon at least 3 business days before the scheduled date for the dispute resolution hearing". The tenant did not attempt to seek an adjournment before the day of this hearing to complete service. Nor did the tenant testify to any efforts made to serve his application to the landlords prior to the date of this hearing.

The criteria provided for granting an adjournment, under Rule 6.4 are;

- whether the purpose for the adjournment sought will contribute to the resolution of the matter in accordance with the objectives set out in Rule 1...
- whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether the party had sufficient notice of the dispute resolution hearing...
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and
- the possible prejudice to each party.

The tenant and landlords both made applications in this matter. The tenant's application sought to cancel the notice to end tenancy and receive monetary compensation or an order to have the landlords act. As the landlords have applied at this hearing for an order of possession, the landlords must justify, on a balance of probabilities that the tenancy should end in support of that application just as he would be required to do on an application by the tenant to cancel the notice to end tenancy. Given that the landlords face the same burden of proof with respect to this issue of an end of tenancy,

I find that the objectives of the Rules and Regulations of the *Residential Tenancy Act* can still be met and that the tenant will receive a fair opportunity to be heard on this issue if I were to proceed with this hearing.

With respect to the tenant's monetary claims, there is a prejudice to the landlord in adjourning this hearing when the landlord's application would remain in abeyance. The tenant has not testified to efforts to serve the landlords or any intentional evasion of service by the landlords. The tenant, on the other hand, has displayed neglect in failing to make attempts to serve his dispute resolution package.

With respect to this tenancy, there is no prejudice to the tenant in proceeding with this matter in these circumstances. However, as the nature of the tenant's monetary requests rely on proving monetary loss and the tenant has failed to serve the landlords properly to defend against any monetary claim, I dismiss the tenant's application for a monetary award or other order sought in his application.

After taking into account the criteria outlined in Rule 6 of the RTB' Rules of Procedure, I dismiss the tenant's application for an adjournment of these proceedings for the reasons outlined above.

As the tenant has not served the landlords with his dispute resolution hearing package in accordance with section 89 of the Act, I dismiss his application to cancel the notice to end tenancy and for the issuance of an order for action against the landlords without leave to reapply. I dismiss the tenant's application for a monetary award with leave to reapply.

### **Issue to be Decided**

Is the landlord entitled to an Order of Possession?

### **Background and Evidence**

This tenancy began on January 1, 2014 as a month to month tenancy. The rental amount for this tenancy was set at \$600.00 per month. The landlords continue to hold a security deposit in the amount of \$275.00 paid by the tenant on January 1, 2014. The tenant continues to reside in the rental unit.

The landlord testified that the tenant has not paid his full rental amount on time since April 2014. The landlord also testified that he has asked the tenant to "find another place" on numerous occasions, offering his assistance to the tenant in doing so. After

discussion with the tenant failed, the landlord served a notice to end tenancy on November 25, 2014.

The 1 Month Notice to end tenancy for cause issued by the landlords provided eight grounds for ending the tenancy including that the tenant (or a person permitted on the property by the tenant);

- is repeatedly late paying rent;
- has allowed an unreasonable number of occupants in the unit;
- has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- has seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- has put the landlord's property at significant risk;
- has engaged in illegal activity that has or is likely to damage the landlord's property;
- has engaged in illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety of physical well-being of another occupant or landlord; and/or
- has engaged in illegal activity that has or is likely to jeopardize a lawful right or interest of another occupant or landlord.

The landlord provided documentary evidence that a notice of breach of the tenancy agreement was sent to the tenant on May 20, 2014. After that notice, a breach letter as well as a warning letter, both dated June 24, 2014 were provided to the tenant. Finally, a breach letter was sent on November 5, 2014. The issues that were addressed in these letters included that; items were unsafely placed on patio; bike(s) were chained to the outside of patio ground floor; the smell of marijuana and complaints with respect to smell of marijuana from the rental unit continued; garbage was left in common areas of the residential property by the tenant's guests; the residents guests were disturbing other tenants with noise; the smoke detectors were disconnected within the rental unit; and other matters relating to the state of the rental unit.

In the final breach letter sent to the tenant in November 2014, the landlords referred to the tenant:

1. engaging in criminal activity (ie: smoking marijuana);
2. allowing an unreasonable number of occupants in the unit (regular coming and going of guests);
3. seriously jeopardizing health or safety of another occupant or the landlord; and
4. putting the landlord's property at risk.

The letter specifically mentions the safety within the building based on the number of occupants that the tenant allows into the residential premises. The landlords write that there are 6-12 visitors per day coming and going from the tenant's unit. The consequences of failing to comply with the landlord requests in this final letter were clearly identified as including the possible "repossession of the property".

The tenant testified that he does in fact smoke marijuana in his unit and that others in the building do, as well. He also confirmed that he has many friends to visit over the course of a day, often 6-12 as suggested in the landlord's letter. He testified that sometimes his 6-12 guests come and go over the course of the day. He did not dispute that there is noise from those comings and goings. He further confirmed that he and his guests leave their bikes chained up on the outside of the ground floor patio as this is most convenient. He also acknowledges that he has received all the previous letters regarding these behaviours. He has not made corrections to his behaviour as he testified that there is "nothing wrong with what I'm doing" and "it isn't only me".

Both parties testified regarding the disconnection of a smoke alarm and disconnection of hydro services. The tenant and landlord provided completely opposing positions with respect to these matters. There was also dispute with respect to the rental amount for this tenancy. The tenant testified, with no supporting evidence, that \$50.00 was to be deducted from his rent each month for work he was to do on the property. However, the tenant also testified that he had not done any work on the property since approximately April, 2014. Regardless of this fact, the tenant had continued to pay \$50.00 less per month than his originally agreed upon rental amount of \$600.00 per month.

### Analysis

The tenant did not deny that he has 6-12 occupants attend his rental unit on any given day, sometimes more than one time each. He did not deny that he smokes marijuana within his unit or that he was aware of complaints from neighbours about the smoke. In fact, he acknowledges smoking marijuana and the regular 6-12 visitors. The tenant also did not dispute that these visitors leave garbage throughout the residential premises. Given the testimony of the tenant confirming the allegations by the landlords and given that there are documented breach letters provided to the tenant, I find that the landlord has proven the tenant or guests permitted on the property by the tenant have significantly interfered with or unreasonably disturbed another occupant or the landlord.

As I find that the tenant and his guest have unreasonably disturbed other occupants, leading to the end of his tenancy, I do not need to consider the other grounds provided by the landlord to end the tenancy.

I find that the landlords are entitled to a 2 day Order of Possession. The landlords will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

As the landlords were successful in this application, I find that the landlords are entitled to recover the \$50.00 filing fee paid for this application

### Conclusion

I dismiss the tenant's application for lack of service, without leave to reapply.

I am granting the landlords an Order of Possession to be effective two days after notice is served to the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

I find that the landlords are entitled to recover the \$50.00 filing fee paid for this application and I issue a monetary award for \$50.00 to be paid by the tenant to the landlord. To implement this monetary award, I order the landlord to retain \$50.00 from the tenant's security deposit. I order that the value of the tenant's security deposit is reduced from \$275.00 to \$225.00.

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: January 22, 2015

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Residential Tenancy Branch

