



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Kitsilano Management Ltd  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant; her agent and an agent for the landlord.

During the hearing the landlord did not request an order of possession should the tenant be unsuccessful in his Application for Dispute Resolution.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The parties agree the tenancy began in December 2005 as a month to month tenancy for the current monthly rent of \$791.00 due on the 1<sup>st</sup> of each month with a security deposit of \$350.00 paid.

The landlord submitted into evidence a copy of a 1 Month Notice to End Tenancy for Cause issued on December 30, 2014 with an effective vacancy date of January 31, 2015 citing the tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.

The landlord testified that there had been a fire in the rental unit that was caused by a space heater. The landlord testified that they did not have evidence to suggest the tenant caused the fire either deliberately or through any negligence.

The landlord submitted that they had been advised from the restoration company that in order to complete the necessary repairs it would be required that the rental unit be vacated and that it would take some time to complete the repairs once vacant. As such they issued the notice to end the tenancy to the tenant.

The landlord submitted also that they have recently been informed that the restoration work can be completed in a couple of days and would only require that the tenant relocate for the time taken to complete the work. The tenant confirmed that she has been contacted by the restoration company and she will be meeting with them to work something out.

The landlord submits that they had issued the Notice to End Tenancy, in good faith, believing what they had been told that the work would require the tenant to vacate the rental unit. However, based on the recent information and the tenant's willingness to relocate for a couple of days they will withdraw their 1 Month Notice to End Tenancy for Cause issued on December 30, 2014.

### Analysis

I accept the landlord withdraws the 1 Month Notice to End Tenancy and find that the tenant will therefore continue in full force and effect.

The tenant seeks still have her filing fee recovered. I accept that once a Notice to End Tenancy for Cause is issued, albeit in good faith, the tenant must, if they want to continue the tenancy, file their Application for Dispute Resolution within 10 days of receiving the Notice.

As such and despite the recent new information regarding the requirement for only a short term departure from the rental unit I find the tenant had no choice but to file her Application to dispute the Notice and as such, she incurred the cost of the filing fee.

I also accept that the landlord was relying on third party information that lead to the issuance of the Notice and that the third party information later changed the circumstances and the landlord's ability to withdraw the notice.

However, I find, due to the limited choice the tenant had she is entitled to recover the filing fee for this Application for Dispute Resolution.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 in the amount of **\$50.00** for the fee paid by the tenant for this application. I order the tenant may deduct this amount from a future rent payment pursuant to Section 72(2)(a) in satisfaction of this debt.

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 28, 2015

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Residential Tenancy Branch

