



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenant: CNC, OLC, LRE, MNDC

For the landlord: OPC, FF

### Introduction

This was the reconvened hearing dealing with the parties' respective applications for dispute resolution under the Residential Tenancy Act (the "Act").

The tenant applied for an order cancelling the landlord's 1 Month Notice to End Tenancy for Cause (the "Notice"), for an order requiring the landlord to comply with the Act, an order suspending or setting conditions on the landlord's right to enter the rental unit, and a monetary order for money owed or compensation for damage or loss.

The landlord applied for an order of possession for the rental unit due to alleged cause and for recovery of the filing fee paid for this application.

This hearing began on January 20, 2015, and due to time constraints, the hearing had to be adjourned after approximately 85 minutes. An Interim Decision, which was entered in this matter on January 23, 2015, should be read in conjunction with this Decision and is incorporated herein by reference.

The parties were informed at the original hearing that the hearing would be adjourned in order to continue with the hearing.

At the original and this reconvened hearing, all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, respond each to the other, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

*Preliminary matter #1-* At the original hearing, when it became necessary to remind the landlord there would be no interruptions during the proceeding and to answer a question as presented, the landlord questioned whether he could get a fair hearing, presumably questioning my bias. The landlord was immediately offered the opportunity for an adjournment of the hearing for the purposes of having another Arbitrator assigned to this matter. The landlord declined and the hearing proceeded.

*Preliminary matter#2-* The parties were instructed by way of the Interim Decision that I would not accept further documentary evidence during the period of adjournment and if received, not reviewed, as only the evidence submitted in advance of the hearing in accordance with the Rules would be considered. The purpose of this instruction is in the interest of administrative fair play and natural justice, as the hearing was adjourned due to length, not due to evidence issues; in other words, there were not 2 separate hearings, but merely a continuation of the original hearing.

During the period of adjournment, the landlord submitted a binder of documentary evidence as well as other documentary evidence. The landlord was advised that I would not consider this evidence; however, the landlord and his agent were allowed to provide testimony concerning this evidence.

*Preliminary matter#3-* I have determined that the portion of the tenant's application dealing with a monetary claim for \$5000 and a request for orders for the landlord's compliance with the Act and suspending or setting conditions on the landlord's right to enter the rental unit are unrelated to the primary issue of disputing the Notice. As a result, pursuant to section 2.3 of the Rules, I have severed the tenant's application and dismissed that portion of the tenant's application, with leave to reapply.

The hearing proceeded only upon the tenant's application to cancel the Notice and upon the landlord's application seeking an order of possession for the rental unit.

### Issues

Is the tenant entitled to an order cancelling the Notice?

Is the landlord entitled to an order of possession for the rental unit and to recovery of the filing fee paid for this application?

### Background and Evidence

The tenant stated that this tenancy began on June 15, 2013. A written tenancy agreement submitted by the tenant shows the tenancy began on June 1, 2014, with a monthly rent of \$1595, and a security deposit of \$797.50 being received from the tenant. This landlord was not the original landlord, as he purchased the residential property from the original landlord.

The evidence showed that the tenant was served with the Notice on December 19, 2014, by attaching it to the tenant's door, listing an effective move-out date of January 31, 2015. On the Notice, the landlord has alleged as the basis for ending this tenancy that the tenant 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, has engaged in illegal activity that has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord, and jeopardized a lawful right or interest of another occupant or the landlord.

In supporting his Notice, when asked to name the illegal activity alleged, the landlord submitted that the tenant's agent called and threatened him, stating he should not go in the rental unit. The landlord confirmed not calling the police about an alleged threat.

The landlord submitted that although he has owned the multi-unit, residential property containing the rental unit since June 2014, he has been requesting the tenant to clean the clutter around the rental unit since May 2014. Additionally, the landlord submitted that the tenant has called repeatedly concerning rats and a leak in the rental unit.

The landlord submitted further that an inspection of the rental unit occurred on December 3, 2014, the first one since he took over ownership of the building. Following the inspection, the landlord sent a letter to the tenant explaining that he did not believe the tenant's friend/witness CG when she informed the landlord that the tenant had been in the hospital at the time of inspection. The letter further notified the tenant she had 7 days to clear the clutter as the landlord was unable to perform a proper inspection for leaks and rodents. The landlord explained to the tenant that there was a possibility that his insurance would be cancelled due to the cluttered state of the rental unit and that the clutter posed a fire hazard.

The landlord submitted that due to the above, he had reason to end the tenancy as the tenant seriously jeopardized the health or safety or lawful right of another occupant or

the landlord, put the landlord's property at significant risk, adversely affected the safety and wellbeing of another occupant, and jeopardized a lawful right of interest of the landlord.

As to the landlord's claim that the tenant significantly interfered with and unreasonably disturbed the landlord, the landlord claimed that the tenant's witness, BG, threatened him with bodily harm.

The landlord submitted further that he and his handyman were denied entry by the tenant on December 19, 2014, after being delivered a notice to enter on December 17, 2014. The purpose of the entry, according to the landlord, was due to emergency circumstances, to ensure the clutter had been cleared so that the insurance would not be cancelled.

The landlord submitted further that the tenant's denial was breach of a material term of the tenancy agreement, not corrected within a reasonable time after written notice to do so. I note that the alleged breach was not a cause listed on the Notice by the landlord.

The landlord submitted that he has had difficulty in dealing with this tenant, that she loathes him, and will not communicate with him.

*Tenant's response-*

The tenant denied calling the landlord repeatedly about rodents, only to report a leak, and that the landlord does have access to under the sink for the leak.

The tenant denied being a difficult tenant, and that when the landlord first inspected the rental unit after taking ownership, he handed her a card, saying to call if she needed anything.

According to the tenant, she was admitted to the hospital for surgery on November 26, 2014, and due to her medical condition, is prevented from any lifting. The tenant submitted that she called her friend, witness CG, from the hospital to find out what happened during the landlord's inspection on December 3, 2014, and was informed the landlord had instigated the calls to her, accusing CG of lying.

The tenant submitted that she explored her rights as to the landlord's multiple inspections, and was told that he did not have the right to make repeated inspections. Thereafter, the tenant denied the landlord's inspection on December 19, 2014, as it had not been 30 days since the last inspection. The tenant denied slamming the door on

the landlord's handyman on this date, but rather, the landlord banged on her door when she was bathing.

The tenant denied that her personal property created a fire hazard or that she would put her child at risk.

*Tenant's witness, BC-*

The tenant's witness stated that he was a fire department employee of 10 years, was a member of the hoarding unit, and has been to 80-100 hoarding inspections.

BC submitted that after receiving several phone calls from the tenant, he and a training officer attended the rental unit on December 9, 2014, for an inspection regarding a possible hoarding situation. BC said the state of the rental unit did not fall under a hoarding classification, that the closets are being used as closets, and that ingress and egress were not impeded.

BC said there were no violations of the fire bylaw, and therefore no notice of compliance had to be issued to the tenant.

In response, the landlord's agent submitted he attended the rental unit and, although he did not believe the state of the rental unit was a classic hoarding situation, the location of the boxes in the rental unit were of concern.

The landlord's agent stated that the fire department attended the rental unit on January 29, 2015, and the fire department issued a written violation, noting that the boxes were in the same location as in the photos submitted in advance of the original hearing. The violation involved removal of the safety bars from the windows and to note that the windows required 30" of clearance.

In response, the tenant submitted that the boxes have been removed from the window area.

*Tenant's witness CG-*

CG, a friend of the tenant, submitted that on December 2, she heard that a notice had been posted on the tenant's door for an inspection on December 3. This led CG to call the landlord to ask if the inspection could wait until the tenant was released from the hospital. The witness stated that the landlord refused to delay as the tenant was a hoarder and the inspection was necessary.

CG submitted that the landlord was quite aggressive with her, accusing her of living in the rental unit, and calling again the next day.

*Tenant's witness BG-*

BG is the husband of CG, and submitted that the landlord called his wife 3 times, which led BG to call the landlord to inform him not speak to his wife the way he had been. BG submitted that he finally had to tell the landlord to not call his wife again.

*Landlord's rebuttal-*

The landlord reaffirmed that his insurance was at risk, that the tenant is extremely difficult to deal with, and refuses to accept his notices, putting her hands behind her back. The landlord submitted further that he has been denied entry to the rental unit by the tenant 6 times and is unable to provide preventative maintenance.

The landlord reaffirmed that the situation with the state of the rental unit has existed since June 2014.

*Tenant's surrebuttal-*

The tenant denied putting her hands behind her back, as she was leaving that day, that she refuses registered mail from the landlord, and has never denied entry when given a proper notice.

The tenant submitted further that she has given the landlord 4 dates to remove the safety bars and that the landlord never asked her to remove the boxes.

The landlord's relevant documentary evidence included, but was not limited to, a written summary in explanation of his evidence and in response to the tenant's application and evidence, a notice to enter the rental unit, dated December 1, 2014, a letter dated December 5, 2014, to the tenant from the landlord, an email from the landlord's insurance broker, dated December 5, 2014, a notice to enter the rental unit, dated December 17, 2014, a notice to enter the rental unit, dated December 22, 2014, stating the entry was for an emergency purpose, a letter from the landlord to the insurance broker, dated December 22, 2014, photographs of the rental unit, a letter dated January 8, 2015, from the landlord's handyman/employee, explaining his version of events surrounding his or the landlord's attempts to enter the rental unit, and a letter to the tenant, dated December 19, 2014, from the landlord.

The tenant's additional relevant documentary evidence included the Notice, a letter from the landlord, dated December 5, 2014, a letter from a health authority regarding the tenant's hospital admission, a note from a doctor regarding instructions for the tenant regarding lifting objects, post-surgery, a letter from the tenant's doctor regarding the tenant's surgery, a witness list, and photographs of the rental unit.

### Analysis

When a tenant disputes a Notice to End Tenancy, the landlord bears the burden of proving that the allegations contained in the Notice are true. In the present case, the Notice was given, pursuant to section 47 of the Act, on the basis that the tenant 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, has engaged in illegal activity that has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord, and jeopardized a lawful right or interest of another occupant or the landlord.

As to the claim of illegal activity, Residential Tenancy Branch Policy Guideline #37 states that an illegal activity would include a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code and the party alleging the illegal activity has that burden of proving it was illegal.

In this instance, I find the landlord has failed to prove any illegal activity by the tenant, and I therefore decline to consider the merits of the Notice on this basis.

As to the other three alleged causes, the landlord claimed that his most serious concern was a possible cancellation of his insurance. In reviewing the evidence, I find the December 5, 2014, email from the landlord's insurance broker to be vague and non-specific. For instance, the broker stated that after seeing the condition of the rental unit, he was deeply concerned about the liability and property exposure, yet the broker did not explain what the concerning condition was, how he became aware of the condition, or if he inspected the rental unit. Further the broker never indicated that the condition would lead to a cancellation of the insurance policy. I therefore find the landlord has not supported his Notice on this basis.

As to the state of the rental unit, I find the tenant's evidence, through her witness, shows that the tenant was not a hoarder and that there was no fire, safety or health concern. The landlord cited that a fire hazard was one of the reasons for ending this tenancy, but

I find the landlord failed to submit evidence of this. I would expect a report from the local fire department or other legal authority with expertise in that field prior to issuing the Notice and in this case, there was none.

I find the landlord failed to submit any proof that the tenant was a hoarder, as claimed, and in fact, the tenant's witness, a fire department employee who has a stated expertise in this field, testified that the tenant was not hoarding. It is also of note that after the original hearing, the landlord called for a fire department inspection of the rental unit. From the testimony, there was no mention made that the rental unit involved a hoarding issue, only a safety issue regarding the security bars, which was not a listed reason for ending the tenancy, and due to boxes by the window, which was found not to be a fire hazard by the tenant's witness.

As to other claims by the landlord, that the tenant has denied entry to the rental unit for inspections, it is clear from the evidence an inspection took place on December 3, 2014. Pursuant to section 29 of the Act, a landlord may inspect the rental unit on a monthly basis and only for a reasonable purpose. The landlord confirmed trying to enter the rental unit multiple times after the December inspection, and therefore had no other rights to enter that month. I do not accept that an emergency existed which would allow the landlord to enter the rental unit without a notice to the tenant, as the landlord stated the condition of the rental unit existed at least since June 2014.

Due to the above, I find the landlord has submitted insufficient evidence to support his Notice, and as a result, I order that the Notice dated December 19, 2014, be cancelled, with the effect that this tenancy continue until it may otherwise end under the Act.

As I have cancelled the Notice dated December 19, 2014, I dismiss the landlord's application for an order of possession for the rental unit based upon that Notice.

I find it necessary to provide reminders to the parties of their rights and obligations under the Act, without making any determinations that either party violated the Act.

As to the landlord's right to enter the rental unit, the landlord is reminded that the tenant is allowed 24 hours after a proper notice is served. If the notice is attached to the door, the notice is deemed served 3 days after attachment; in effect, the entry may not take place earlier than 4 days after attachment. If the notice is sent by mail, the notice is deemed served 5 days later; in effect, the entry may not take place earlier than 6 days after mailing.



The tenant is reminded that she may not prevent a landlord from entering the rental unit if proper notice is given.

For further, more detailed explanation, I direct the parties' attention to section 7 of the Residential Tenancy Branch Policy Guideline.

### Conclusion

The tenant's application requesting an order cancelling the Notice is granted.

The portion of the tenant's application requesting monetary compensation and orders for the landlord was severed and dismissed, with leave to reapply.

The landlord's application requesting an order of possession for the rental unit and for recovery of the filing fee paid for this application is dismissed.

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: February 23, 2015

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Residential Tenancy Branch

