



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC

### Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Notice to End Tenancy was sufficiently served on the Tenant by posting on February 14, 2015. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on February 25, 2015. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issue to be decided is whether the tenant is entitled to an order cancelling the one month Notice to End Tenancy dated February 14, 2015?

### Background and Evidence

The tenancy began approximately one year ago. The agent for the landlord testified the respondent purchased the property pursuant to a court order that was initiated under the BC Civil Forfeiture Office with completion taking place after the tenant became a tenant. The respondent has not been able to find a residential tenancy agreement. However, a tenancy has been established with the use of the property by the tenant and

the payment of \$400 per month. He further testified the records he has indicate the tenant paid a security deposit of \$200 at the start of the tenancy.

The landlord testified the tenant has been engaged in illegal activity; specifically drug trafficking and possession that has and is likely to damage the landlord's property, adversely affect the quiet enjoyment of other residence and jeopardizes the lawful right or interest of the landlord. In particular the activity of the tenant puts the property at risk for Civil Forfeiture proceedings and puts other tenants at risk of property damage and drug related violence.

The landlord produced the following evidence to support the allegation that the tenant is engaged in drug possession and drug trafficking:

- The tenant has changed the locks on her door and will not permit the landlord access to inspect the rental unit;
- There is a constant flow of foot traffic to and from the rental unit. This interferes with the quiet enjoyment of other tenants and is a security risk. Commonly the foot traffic goes comes in and goes out through the back door.
- One of the landlord's agents, MP testified he visits the rental property on a daily basis. On many occasions he has witnessed the use of drugs in the hallway and foot traffic going to and from the rental unit. At times there are over 30 people coming to and from the rental unit over the course of an hour.
- The landlord produced the decision from another Residential Tenancy hearing which involved the successful eviction of the tenant's boyfriend which was held on May 7, 2014. The tenant was a witness in that hearing. The decision includes the following:

"The agents testified that the tenant goes by the name of "Pablo" and that visitors constantly knock on the door of the hotel and ask to speak to "Pablo" for the purpose of buying drugs. The agents stated that visitors asking to speak to "Pablo" say they "wanna buy dope from Pablo" or to "buy a sack of dope". Agent "MP" stated that on March 1, March 2 and March 3 of 2014, he was present for three hours at the hotel entrance and

during that time frame, every five minutes or so for a total of 30 to 40 times, 90% of the time someone would knock on the door and ask for "Pablo".

During the hearing, the tenant's witness, "TT", confirmed that the tenant was also known as "Pablo". Witness "TT" stated under oath in response to one of the agents' questions under cross-examination that "a lot of people here smoke a lot of drugs and Pablo [the tenant] doesn't smoke as much."

Based on the above and on the balance of probabilities, I find that the landlord has met the burden of proof by proving that the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord. The tenant's witness, "TT" confirmed that the tenant is known as "Pablo" and that he smokes drugs which is consistent with the agent's testimony that on March 1, March 2, and March 3, 2014, that every five minutes or so over a span of three hours, that someone would knock on the door of the hotel and ask to speak to "Pablo", the tenant's alias name, to purchase "dope" or drugs. Therefore, based on the above, I prefer the testimony of the agents over that of the tenant. I find the landlord's 1 Month Notice dated March 11, 2014 is valid. **I dismiss** the tenant's application to cancel the 1 Month Notice and I **uphold** the landlord's 1 Month Notice."

- The landlord testified the tenant's boyfriend is seen on the rental property on a regular basis.
- The agent CS testified that when serving the Application for Dispute Resolution on the tenant the tenant stated about other things that "P is my boyfriend..." and "we like to party here" ("party" is street slang for heroin or crack cocaine use) and "we are both addicts."

The landlord also seeks to end the tenancy on the basis that the tenant has denied the landlord access to the rental unit and have prevented government authorities from completing inspections. In particular the landlord relies on the following:

- In order to comply with existing work orders from the city and fire department, the landlord carried out repairs including replacing all the deadbolts on the suite doors, keyed to a master key. The work was completed April 27, 2014.

- In the fall of 2014 the landlord noticed the locks on the rental unit had been changed so that the landlord could no longer access the unit.
- On October 20, 2014, a routine follow-up inspection by the Property Use Inspector observed the landlord had no access to the tenant's rental unit and the city issued a work order to provide access. The tenant failed to respond to the landlord's requests to provide access to a locksmith.
- On January 15, 2015 the City of Vancouver issued an order that access be provided to the tenant's rental unit failing which the matter would be referred to the City Prosecutor for the laying of charges.

The tenant denies that she is in possession and trafficking of drugs. She denies the evidence of the landlord that there is a constant flow of short term visits to her rental unit. She testified that occasionally on the weekends she will have some girlfriends over. She further testified she allowed the pest control contractor to spray her room recently. She testified she has a key which she is prepared to give to the landlord. She denied using drugs although later admitted she is receiving methadone treatment.

#### Grounds for Termination

The Notice to End Tenancy relies on section 47(1)(d), (e) and (1) of the Residential Tenancy Act. That section provides as follows:

Landlord's notice: cause

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

...

- (d) the tenant or a person permitted on the residential property by the tenant has
  - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
  - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
  - (iii) put the landlord's property at significant risk;

- (e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

- (i) has caused or is likely to cause damage to the landlord's property,
- (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
- (iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

(i) the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 [assignment and subletting];

Section 29 of the Residential Tenancy Act provides as follows:

**Landlord's right to enter rental unit restricted**

- 29** (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:
- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
  - (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
    - (i) the purpose for entering, which must be reasonable;
    - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
  - (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
  - (d) the landlord has an order of the director authorizing the entry;
  - (e) the tenant has abandoned the rental unit;
  - (f) an emergency exists and the entry is necessary to protect life or property.
- (2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

Analysis

The landlord has the burden of proof to establish sufficient cause to end the tenancy.

In *Faryna v. Chorny*, [1952] 2 D.L.R. 354, the B.C. Court of Appeal set out the following test for assessing credibility:

“The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carries conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. (page 357)”

I found the testimony of the two agents for the landlord to be precise, credible and in harmony with the preponderance of probabilities. The tenant did not dispute that she changed the locks or that she denied the landlord access to the rental property. I accept the testimony of the agents that there is a regular flow of foot traffic through the back entrance and leaving after a short period of time. This is consistent with drug trafficking. The agent for the landlord has also witnessed the use of drugs in the hallway from people going to and from the tenant's unit. I found the testimony of the tenant to be lacking candidness. When cross examined in this hearing she stated she was not sure if drug trafficking was a problem in this building which is at odds to her testimony as recorded in the previous hearing. The conduct of the tenant in changing the locks and the failure of the tenant to provide the landlord with a key has put the landlord and other tenant at significant risk. The tenant did not have a lawful right to change the locks nor deny the landlord access where the landlord has followed the provisions of section 29 of the Act. The City has threatened to turn the matter to the City Prosecutor. The landlord is constantly worried that the office of BC Civil Forfeiture will step in and seize their asset.

I find that the landlord has met the burden of proof and has established sufficient cause to end the tenancy by proving that the tenant has seriously jeopardized the health or

safety or lawful right of another occupant or the landlord and has put the landlord's property at significant risk.

#### Determination and Orders

As a result I dismissed the tenant's application to cancel the Notice to End Tenancy. I order that the tenancy shall end on the date set out in the Notice.

#### Order for Possession

The Residential Tenancy Act provides that where a landlord has made an oral request for an Order for Possession at a hearing where a dispute resolution officer has dismissed a tenant's application to set aside a Notice to End Tenancy, the dispute resolution officer must grant an Order for Possession. The landlord made this request at the hearing. As a result I granted the landlord an Order for Possession effective March 31, 2015.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

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: March 25, 2015

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Residential Tenancy Branch

