



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kiwanis Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, MNSD, FF
 MT, CNC, OLC

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord has applied for an Order of Possession for cause, for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit and to recover the filing fee from the tenant for the cost of the application. The tenant has applied for an order allowing the tenant more time to make an application to cancel a notice to end the tenancy, for an order cancelling a notice to end tenancy for cause, and for an order that the landlord comply with the *Act*, regulation or tenancy agreement.

The hearing did not conclude during the time scheduled and was adjourned for a continuation of testimony and submissions over the course of 5 additional hearing dates. The tenant and an agent for the landlord attended the hearing on each of the dates scheduled, and the landlord was accompanied by legal counsel.

At the commencement of the hearing the tenant advised that the evidence of the landlord that was provided to the tenant is not tabbed, is not in the same order as the one provided to the Residential Tenancy Branch, and the tenant is not sure that all evidence the landlord provided has been received by the tenant. The landlord's counsel stated that they were not tabbed, but all evidence was provided to the tenant in the same order as provided to the Residential Tenancy Branch. The matter was adjourned to later in the day, due to my scheduled hearings, and the landlord's counsel advised that during the break, an agent of the landlord offered to ensure the evidence was placed in the same order with tabs, but the tenant refused. The tenant stated that she had written on some of the material and didn't want it to leave her hands. The tenant was encouraged to follow along with the evidentiary material as best she could and if a document was referred to that the tenant could not locate, the tenant should advise. The tenant did so, and the landlord agreed to email certain documents to the tenant during breaks in the hearing.

During the course of the hearing, the landlord testified that the caretaker of the rental complex received the tenant's evidence package on April 2, 2015, which he believes is outside the time permitted. Rule 3.15 of the Residential Tenancy Branch Rules of Procedure deals with a respondent's evidence:

“In all events, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than 7 days before the hearing.”

In this case, the tenant is an applicant and a respondent. As an applicant, the tenant is required to serve evidence with the application for dispute resolution, or not less than 14 days before the hearing. The hearing was scheduled for April 18, 2015, and I find that the tenant has provided the evidence within the time required.

During the course of the hearing the tenant advised that she was not served with the landlord's application for dispute resolution, but the landlord served the tenant with the same documentation that the tenant left with the landlord. The tenant left them on the ground. Counsel for the landlord argues that the tenant has provided a copy of the landlord's application for dispute resolution in her evidence package and therefore has received them. I accept that, and if the tenant left them on the ground she would not have known what documents they were. The landlord testified that he dropped the documents over the tenant's shoulder on March 17, 2015, which I find is personal service, and I find that the tenant has been served in accordance with the *Residential Tenancy Act*.

Counsel for the landlord also argued that since the tenant hadn't notified the landlord on the first day of the hearing that a certain witness would be called, the tenant should not be permitted to call him. Neither party had provided any witness lists prior to the commencement of the hearing, and I fail to see how calling a witness that the landlord's counsel had little notice of could prejudice the landlord. The tenant was permitted to call the witness.

The parties each gave affirmed testimony and called witnesses who gave affirmed testimony. The parties were given the opportunity to question each other and the witnesses respecting the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Should the tenant be allowed more time to dispute a notice to end tenancy?
- Has the landlord established that the 1 Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?
- Should the notice to end tenancy be cancelled?

- Has the tenant established that the landlord should be ordered to comply with the Act, regulation or tenancy agreement?
- Should the landlord be permitted to keep all or part of the pet damage deposit or security deposit?

Background and Evidence

The landlord's agent (hereafter referred to as the landlord) testified that this month-to-month tenancy began on December 1, 2012 and the tenant still resides in the rental unit. Rent is subsidized and the tenant's portion is \$457.00 per month payable in advance on the 1st day of each month, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$508.50 as well as a pet damage deposit in the amount of \$508.50, both of which are still held in trust by the landlord. The rental unit is one of 18 units in a rental complex and a copy of the tenancy agreement has been provided.

The landlord's agent further testified that the tenant was served with a 1 Month Notice to End Tenancy for Cause on February 26, 2015 by handing it to a person who apparently resides with the tenant. A copy of the notice has been provided and it is dated February 26, 2015 and contains an effective date of vacancy of March 31, 2015. The reasons for issuing the notice are:

- Tenant has allowed an unreasonable number of occupants in the unit/site;
- Tenant or a person permitted on the property by the tenant has:
 - 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;
- Tenant has engaged in illegal activity that has, or is likely to:
 - damage the landlord's property;
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;
- Tenant has caused extraordinary damage to the unit/site or property/park;
- Tenant has not done required repairs of damage to the unit/site;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord further testified that there have been a number of complaints from other tenants about loud noise, parties and a number of people attending all hours of the day and night and staying at the rental unit. The landlord has noticed usually males at the

rental unit, particularly in the summer. One fellow is constantly seen there by the landlord and is not on the tenancy agreement although the tenant denies that he lives there. The tenant told the landlord that he lives in another municipality, but he works locally, or just out of town. Further, the rental unit has 2 bedrooms and the tenant has one child. The landlord's agents do regular inspections, and the living room has 2 couches with blankets and pillows as well as 2 double beds in basement, and the garage has 1 couch with blankets as well as 2 mattresses stacked against the wall. The tenant told the landlord that a care-giver sometimes stays overnight and sleeps in the basement. However, on July 2, 2014 the landlord received a complaint about the tenant subletting to fruit pickers and about marihuana smoking, and on August 6, 2014 the landlord received complaints of lots of people living there and a lot of junk outside, as well as a big barking dog staying that the rental unit which is not the tenant's service dog. Due to the complaints and the amount of stuff in the garage, the landlord believes transient fruit pickers stay there.

Also, on August 7, 2014 the landlord's agents received a complaint of vehicles coming to the rental unit all night and people using other tenants' garbage cans which costs money when there are extra bags. Further, on December 26, 2014 the landlord's agents received a complaint of continuous all-night activities and the police were called a few times. Another tenant is afraid and won't allow children to play outside due to the on-goings. Other tenants have described the people as drug-type individuals. During 2014 the landlord received about 10 complaints and some in 2015 as well. One complaint was about a dog running loose on the neighbouring church property, leaving feces and getting into garbage. As well, on January 28, 2015 a tenant complained of hearing banging and hammering inside the rental unit at night. On March 17, 2015 the tenant knocked on another tenant's door demanding to know if that tenant had called police.

The landlord has also provided photographs dated June 19, 2014 and was present when they were taken. The landlord testified that the tenant has kept a barbeque under a tent on the patio which is a fire hazard. Also plugs lying over water in basement where there were issues with water ingress is a fire hazard, and the tenant has left clutter, such as a metal fence, sharp objects as well as bits of sharp metal on the patio.

The landlord further testified that the flooring and carpets in the rental unit were replaced prior to the tenancy and the plumbing was in good order. A move-in condition inspection report was completed but a copy has not been provided for this hearing. Beginning in September, 2013 the rental unit started to take on water in the basement. It took some time, however, the landlord believes it has now been repaired. Water was entering through window wells and gyprock got moldy. The landlord contracted someone who tested the air and no bacteria spores were detected. It dried and then re-

occurred and in March, 2014 the exterior was dug up and window resealed, and water was noticed coming up between the basement wall and the floor. Quite a lot of the wall was replaced. In April, 2014 a remediation company was called but the tenant denied them entry because not enough notice was provided and the tenant called a different company. The landlord agreed to pay for it, however, the tenant made it difficult for both companies to get in to do the work. The landlord believes that the gutters in the neighbouring/joining unit were causing the problems and the landlord's contractors pulled all sprinklers. One was broken and filled up the window well in the rental unit. The tenant also watered around the window wells, which certainly contributed to the problem. The landlord has also provided photographs taken on May 15, 2014 and was present when they were taken showing that the irrigation system near the rental unit was capped off to prevent any water from flowing in order for the landlord to determine where water was leaking, verifying that nothing from the irrigation system caused the problem.

The landlord further testified that the photographs of May 15, 2014 show the outside of the rental unit with clutter. Leaving garbage there interferes with parking.

The landlord further testified that the tenant replaced the carpet in the rental unit twice without the landlord's consent, and an inspection completed on May 30, 2014 shows that as well as a generally cluttered rental unit. The tenancy agreement specifically states that written permission is required.

The tenant has also been hanging clothing and blankets on the fence that separates the rental complex yard from that of the neighbouring church, as well as hanging wet laundry on the rafters in the basement and told the landlord the dryer wasn't working.

The tenancy agreement provides that the tenant may not have pets unless authorized by the landlord. The landlord has given the tenant permission to keep her service dog, however the tenant also has a cat, which has not been authorized by the landlord. A photograph of the cat in a window of the rental unit has been provided.

The landlord also testified that the tenant or the tenant's guests have caused extensive damage to the rental unit, which is believed to be in excess of \$10,000.00 to repair, and the landlord applies to keep the security deposit. The linoleum has deep scratches and will have to be replaced, the carpet does not appear to have underlay, nor was it professionally installed and does not appear to be new. Walls will also need to be filled and sanded and painted, and the trap door to the attic appears to be missing a piece. Photographs have been provided.

The landlord gave the tenant a letter respecting over-watering, storage in the garage, unauthorized people on the property, additional beds, dogs, clutter at the front door and

side of the garage, and respecting the tenant's request for more children to be permitted in the unit. A copy of the letter has been provided, and the landlord testified that it was meant to encourage the tenant to comply with the tenancy agreement and the rule that anyone living in the rental unit must be in the tenancy agreement. The tenancy agreement in place shows the tenant and 2 children.

The landlord further testified that a plumber had been called to the rental unit due to a plugged sink in June, 2014. Photographs have been provided as well as an invoice showing that the plumber removed hairpins, hair, pieces of glass or porcelain and bandaids. The letter reminds the tenant to pay for that bill which amounts to \$198.90 because the items retrieved were obviously as a result of the tenant's negligence. Also, the plumber had to be called out on a weekend which increased the bill.

The tenant has consistently interfered with the landlord and contractors by refusing entry unless the tenant was given written notice 24 hours in advance and if posted on the door, the landlord and contractors would have to give an additional 3 days notice. The tenant has also been uncooperative and meddling by interfering with contractors and telling the landlord which contractors should not be contracted to work in the rental unit. On October 28, 2014 the tenant requested repairs and the landlord's agent responded asking for access on October 29, 2014, but even though it was an emergency repair, the tenant said it couldn't happen until November 6, 2014. Also, in November, 2014 the landlord went to the rental unit with a maintenance person to service the smoke detector. Notice had been provided to the tenant. The tenant had put up a blanket in the hallway between the kitchen and living room and refused them entry because the landlord hadn't told the tenant that the maintenance person would also be attending.

The tenant also broke into the mailbox. The tenant had told the administration staff of the landlord that the mailbox key broke. The landlord repaired it and it was broken into again. The tenant was told to attend the landlord's office to get a key and she failed to do so and the third time it was broken into, the landlord did not have it repaired.

Other damages have also been done by the tenant or the tenant's guests, such as the stove which was completely taken apart and replaced by the landlord, the fridge was broken and also had to be replaced at a cost of \$1,100.00, most of the electrical plugs have been broken and countless pin-holes are in the walls and ceiling. The landlord also believes the tenant has on occasion poured water on the floor in the corner of the basement, and applied for a monetary order in the amount of \$4,200.00 in June, 2014 but was not successful.

The landlord further testified that the complaints contained in the tenant's evidence package were never seen by the landlord before receiving the evidence package.

Generally, when the tenant had complaints or repair requests, the tenant would use email and none of the letters in the tenant's evidence package are emails; they've been signed.

The landlord seeks an Order of Possession and an order permitting the landlord to keep the security deposit due to damages.

The landlord's first witness (RS) testified that he is a resident of the rental complex and has been for almost 7 years residing directly across from the rental unit. The witness has complained to the landlord's agents about noise, vehicle and foot traffic all times of the day and night, drugs, and partying all night at the tenant's rental unit. The witness recognizes drug dealers and buyers at the rental unit from his youth, and has noticed that people make 5 minute stops and are in and out all the time. Police are at the rental unit about once per month, including today, but the witness does not know what that was about. However, on March 7, 2015 late at night, the tenant had a bunch of teenage or younger kids partying at the rental unit and police were there. A pile of vomit was found in the parking lot the next morning and the tenant had told the witness that it was from kids doing mushrooms, and the witness has smelled pot many times. The frequency of police attending bothers the witness. The tenant has also told the witness that one guest of the tenant is no longer welcome because he was a thief and hangs out in his car, and also told the witness that the tenant's friends like to do home invasions with baseball bats. The witness does not use drugs but knows who the tenant's guests are, and it's the meth and coke dealers that concern him.

The witness also testified that the tenant's boyfriend has been at the rental unit as long as the tenant has, and is there every day – all the time. In the witness' experience, the tenant is the worse tenant that's ever resided at the complex. The witness goes to work by 6:00 a.m. and is very concerned that the people attending the tenant's rental unit are not safe for the witness' kids.

The landlord's second witness (HM) testified that she is a resident of the complex and has been for over a year with her husband and 2 children. The witness is a part-time home support worker who works on the well-being of quadriplegics and helps with at-risk youth and bed-ridden clients.

The witness testified that she has brought up issues with the landlord of unacceptable comings and goings from the tenant's rental unit and has observed unhealthy people arriving at all times of the night with or without vehicle. Police have been called approximately once per month. The witness hears arguing off and on, hammering and construction work coming from the tenant's unit from 4:00 till 11:00 or midnight. The tenant's rental unit is joined with the witness' unit, and the witness' bedroom is against the common wall. The tenant had told the witness that the noise coming from the

tenant's rental unit is a washing machine that was off-balance, however the witness testified that she knows what a hammer, drill and saw sound like, and that's what she heard, not a washer.

The witness is very concerned about activity that the tenant allows to happen in the rental unit. Acquaintances are unhealthy and it gets quite busy with traffic coming and going and it's a risk for young children all over the complex as well as a safety issue. There have been some unruly acquaintances that haven't driven appropriately and the witness is concerned about the noise and traffic safety.

The witness also testified that there is unnecessary clutter in the front entrance and back side of the tenant's rental unit, such as a blue couch and chair, a box of odds and ends to give away on the sidewalk. The witness did not see who put the couch there but believes the tenant's rental unit is the only place it would come from.

The landlord's third witness (PBT) is a pastor at the neighbouring church, and testified that the tenant has had dealings with the church. The tenant has asked for help with purchasing groceries when she was new in town and has asked for help in that nature from time to time, but not lately. The tenant had asked for food vouchers and when not successful, the tenant would call the church again asking to speak to someone else. The witness found the tenant to be quite manipulative.

On March 30, 2015 the church was contacted by an unidentified person who stated that she represented a community impact committee and wanted to talk to the witness about the reports and complaints the witness had made. The person also mentioned a meeting, but the witness wasn't there. The witness then received an email from a person later identified as the tenant's boyfriend, saying that a meeting would be held to address neighbours' concerns and asking to give as much information as possible about it to the writer. Later in the evening the witness received a call from an unidentified female on behalf of that committee wanting to know all of the witness' concerns, and the witness realized that the person was the tenant. The witness contacted the apartment manager who advised that she had no knowledge of the committee.

In the last year a number of issues have come up and the witness talked to the apartment manager about it and gave the apartment manager a list of concerns, such as laundry hanging on or over the fence, people adding to the church garbage which affects the bag limit, couches last summer and fall on the church side with a "Free" sign for a number of weeks, and other neighbours asked the witness about it. He also testified that there is a lot of pedestrian traffic cutting through the property and garden area which has now fallen into disrepair. The witness has never known the identity of them.

The witness also called the apartment manager about a dog getting into neighbours' garbage cans. The witness chased it away twice after garbage bags had been torn apart and left a big mess. The dog ran off to the same place both times. Dog feces is an open issue between the church and the rental complex. The dog is a smaller type of dog with a dark brown mixed color.

The witness does not know which unit the tenant resides in, however when ever there are complaints, the witness speaks to the manager of the complex. She is effective and addresses issues in a timely fashion, reflecting on good management of the complex. The witness has not communicated with the tenant about the issues.

The landlord's fourth witness (PS) is the full-time administrator and manager of the rental complex and testified that she has been since July 1, 2014. The tenant was already resident in the complex at that time. The complex has an office and the witness is there from 7:00 a.m. to 4:00 p.m. on Mondays to Thursdays, and 7:00 a.m. to noon on Fridays. The office is open from 9:00 a.m. to 3:00 p.m. Mondays to Fridays.

The witness compiled a list of complaints received about the tenant which has been provided for this hearing and testified that the list is true. The witness also testified that she received a call from one tenant complaining and asking about fruit pickers living in the tenant's rental unit. The person said that a lot of new people were staying there and saw them smoking pot outside the tenant's rental unit. The witness documented it but did not speak to the tenant. The witness went and had a look to see if anything would corroborate that complaint and saw a lot of items outside around the front door and garage door, such as pieces of furniture and a lot of other items. Again, the witness did not speak to the tenant about it. However, on July 18, 2014 a neighbour complained about the discarded furniture and other stuff lying around making the complex look junky. The witness spoke to the landlord about it, who got a truck to take the items to the dump.

The witness also received a complaint in August about a lot of water being used at the tenant's rental unit and the person wanted to ensure the witness was aware of it, although the person didn't want to be involved and asked that their names not be mentioned due to fear of retaliation from the tenant. The witness was concerned because the witness was told of previous water in the basement of the rental unit. Then the next day the tenant was seen watering at 2:00 a.m. The witness went to the rental unit and witnessed it.

The witness conducted an inspection of the rental unit on August 12, 2014 and took photographs which have also been provided for this hearing. The witness found the window wells of the rental unit very, very wet as well as the hedges, and testified that a

hose would be required to get that much moisture. There had been no rain and all else was very dry.

On October 23, 2014 a neighbour asked the witness if the witness knew that the tenant was moving dirt in and out of the rental unit, fighting outside was disturbing to other neighbours, and about the use of other tenants' garbage cans. The same day, the pastor at the neighbouring church complained to the witness about garbage over the fence. The witness attributed both complaints to the tenant's rental unit. Also, a neighbour told the witness that the furniture left on the sidewalk belonged to the tenant and the neighbour had given it to the tenant. The witness talked to the landlord about it and it was taken away.

On December 26, 2014 the witness received complaints of all night activities, lots of traffic in and out of the rental unit and the police had to be called a few times. Other tenants are getting fed up and afraid. In March, 2015 a neighbour had called the witness complaining that the tenant had knocked on her door asking if the neighbour had called the police.

The witness also testified that annual inspections have recently been done in the complex which showed minor repairs required in some of the units, however a lot of damage and a lot of repair was needed in the tenant's rental unit. Plug-ins were broken, light fixtures and floors were damaged, there was stuff everywhere, problems with plumbing, vents missing, and window coverings are in poor condition. The witness found the rental unit to be unclean, and stated that it is very bad in there. The witness found a lot of spoiled food, the rental unit is generally dirty, the bathrooms weren't clean and the floors were stained and damaged. There are tripping hazards at the front door and front door step; mostly seasonal items, such as huge amounts of Christmas, Valentines, Easter decorations, bags of garbage, things taped to the door, window, wall, and garbage lined up along the garage. It changes all the time, but there is always an unreasonable amount of clutter at the front door. Other units have no garbage on their front porches and it's not difficult to get into other units like this one. The damage to the rental unit is beyond normal wear and tear, and the number of pin-holes in the walls is also beyond normal wear and tear.

The witness also testified that when there are problems, she tries to respond right away but it has been difficult to get ahold of tenant to make repairs to the rental unit. Appointments are always changed by the tenant or the tenant will stop a person from doing a repair because she wasn't told and the witness has been met with lots of road blocks even though the repairs would benefit the tenant.

The witness also testified that tenants are required to update their financial information to qualify for a subsidy. For the latest, the witness had an appointment with the tenant,

but the tenant changed it, missed the next appointment, and left a message later that night giving a bunch of criteria for setting up a new appointment. The criteria included not having the landlord present, and the appointment still hasn't been booked. Everything with the tenant is always difficult. There is always a long process to get into the rental unit to do anything needed and difficult to set up sub-trades.

The witness also testified that she was present when the 1 Month Notice to End Tenancy for Cause was issued, which was issued due to complaints based on interference and disturbing other tenants, traffic, health and safety of other tenants, and damage to the landlord's property. The notice was served on February 26, 2015 and a Proof of Service document was signed by the person who served it and the witness.

The tenant has never attended the office and has not dropped off any letters for the landlord or the landlord's agents. The letters in the tenant's evidence package have never been received from the tenant, nor has the witness seen any of them before, or any verbal or written complaints, other than on one occasion the tenant complained about a vehicle that woke her up and she pulled out the keys.

The tenant testified that the landlord's attitude towards the tenant is disturbing and abusive. He constantly intimidates the tenant and guests.

The tenant also denies that the landlord's agents served her boyfriend with the notice to end the tenancy and has provided a letter from him stating that he was not in town on the date the landlord testified he was served.

The tenant further testified that she received no warning regarding noise or disturbances to the next door neighbour, but did have conversations with them. The tenant discovered that while spinning, the washer in the basement would move making a kicking noise and was very loud. The tenant apologized, had the washer fixed, and then confirmed with the neighbour a week later that the noise stopped. There is no sound-proofing and the tenant can hear neighbours snore.

The tenant also testified that it's difficult to get ahold of anyone at the office, and the tenant has been phoning since the beginning of March to make an appointment for completing the subsidy application.

The tenant's boyfriend has his own address, is a seasonal worker and when not working in another town he works at a different job locally. He resides in a 5th wheel provided by his employer. In winter when it's too cold he stays with friends who also do seasonal work. He is at the rental unit a lot, but leaves when the tenant goes to bed. The tenant's care worker is also there a lot and sometimes brings her child to play with the tenant's child so daycare isn't required. The tenant denies having 2 couches. There

are blankets and pillows on one because the tenant cuddles with her kids while watching TV. Also, having mattresses against the wall doesn't mean there are others residing in the rental unit. The tenant has 2 children, one resides with the tenant part-time.

The tenant also denies disturbing the landlord's witness or a conversation with him about someone vomiting in the parking area. The children that he mentioned in his testimony were not at the rental unit late.

The tenant also denies that any transient fruit pickers stayed at the rental unit, and testimony of others about people coming and going to and from the rental unit is inaccurate. The tenant has 7 or 8 friends who visit consistently. The rental unit is large enough for the tenant's family and close to school. However, another unit similar in size with a large therapeutic tub became vacant and it had no water problems, but the tenant was refused tenancy for that unit. The tenant made an application to BC Housing but wanted to remain in the complex.

With respect to safety, the tenant is overly cautious and has secured her service dog and created a safe fence with nothing poking. The clothing rack was on the patio fenced in, and no one can get hurt. The tenant also has a fenced-off area 4 feet high which is where the dog does his business. Dog feces in the yard have been cleaned up by the tenant even though they didn't come from her dog.

The tenant also testified that the rental unit was filthy when she moved in and she put in a lot of hours cleaning. The burner plates on the stove were so bad the tenant used a putty knife and screwdriver to clean them. Two of the elements didn't work well and were not level. Dials were broken so the tenant glued them in place. The tenant asked for it to be replaced because it was shocking her. The fridge door was loose and dropped when opened; shelves in the door were taped on and drawers were balanced on broken plastic. The landlord's maintenance person put in a toilet paper roll from the tenant's garbage to hold the parts in place with glue. When the landlord arrived to pick up the fridge and stove, the handles and burners were on top of the stove and fridge bins were also there. The landlord told the tenant that the appliances were going to the dump and the fridge drawers were left at the rental unit and are still there. The oven door was held together with the handle and the handle fell off. The linoleum is not damaged but had marks from moving the dishwasher into the kitchen which were removed with a Magic Eraser. Missing closet doors and blinds were removed by the handy man because they wouldn't stay on the castors and the tenant was afraid they would fall on the kids or cause damage so he removed them. Also, the Arbitrator from the previous hearing ordered moldy blinds to be removed.

The tenant further testified that the previous manager gave the tenant permission to change the carpet because the tenant's service dog desecrated on it. It was replaced again with underlay and completed by a professional and the tenant will have it replaced again when she moves out if it's necessary and will follow all of the Residential Tenancy Branch guidelines as it relates to the pin-holes in the walls, cleaning and any other damage issues.

With respect to the plumbing bill, the landlord testified that the bill is large because the contractor was called out on a weekend, but the tenant's calls to the landlord started a whole week and a day before that. The tenant was without a sink for almost 5 days, tried plunging and used Drano. The tenant was having 20 people for dinner and got upset about it calling the landlord's phone and the landlord's home phone number. A plumber fixed it and the tenant got the bill in the mail and the landlord said the stuff in the drain belonged to the tenant. There is no proof of that.

The tenant also testified that the landlord applies rules to her but not other tenants. The tenant has the same types of things on her porch as other units, but the tenant is targeted and because the tenant made a stink about water in the basement. The landlord accuses the tenant of being disgusting and dirty, but the rental unit is cleaner now than at the beginning of the tenancy. The inspection reports are not all signed by the tenant, or some don't contain a checkmark showing that the tenant found the reports to be accurate.

With respect to the trap door in the ceiling to the attic, the tenant testified that a maintenance person had to go up there for the landlord to ensure proper insulation. The door had been painted shut and when he pushed on it, it tore. No one ever came back to fix it.

The tenant also testified that after the landlord turned off the sprinkler and outside tap at the rental unit the tenant used buckets, pots or milk jugs to water outdoor plants,, and denies connecting a hose to the washer through the window or pouring water into the window well.

The tenant agrees that permission is required before obtaining another pet, however the tenant has taken care of strays. The one in the window of the landlord's photograph is the third one. The SPCA came and now the tenant looks after this one. The tenant didn't request permission because she wasn't ready to commit to having a cat. Other tenants also feed it.

With respect to the amount of items in the garage, the tenant testified that she had a conversation with the landlord wherein she advised that her uncle had passed away and she was going through his belongings, having been named in the Will. The tenant is not

conducting a business, the items belonged to the uncle and not to a business owned by the uncle.

The landlord also told the tenant that he didn't like the tenant's guests, but the tenant didn't know there were complaints.

The tenant seeks an order cancelling the notice to end the tenancy, and an order that the landlord comply with the *Act* by providing the tenant with sufficient notice to enter the rental unit.

The tenant's first witness (AT) testified that she met the tenant through a mutual friend; a home care worker 8 months to a year ago, and the witness' mother resides in the rental complex and looks after her children. The witness is at the rental unit 2 times a week or so, has coffee, and doesn't stay long.

The witness was present when the tenant was speaking to the landlord on the phone about a clogged sink and pot smell. The sink was plugged for 5 or 6 days, and wouldn't drain. The water in the sink was dirty. The tenant was having company and got upset. The witness does not know where the pot smell was coming from.

The witness was also present when the landlord and tenant had a conversation about the fridge. The witness stated that it was clean enough, and the landlord checked it. There was a bunch of arguing and they were butting heads about everything. Also, the dial in the fridge didn't work; the inside was demolished and held together with duct tape, which resulted in spoiled food.

The witness saw the landlord testing the burners on the new stove and there was a heated discussion. The tenant got upset about the old stove and the landlord was calling her down about it and being rude. The tenant was okay with the new one. The fridge and stove were both replaced at the same time.

The witness also testified that prior to receiving the notice to end the tenancy the tenant got rid of the dishwasher. That happened 2 or 3 months ago, sometime after Christmas. The witness and tenant down-sized when they took down the decorations.

The witness also testified that the tenant rarely has any company while the witness is at the rental unit other than her care worker.

The tenant's second witness (NH) testified that he is the tenant's boyfriend and lives in a trailer in an orchard where he helps a woman with pruning apple trees and preparing the orchard. The witness' other boss lives in another community but travels and calls the witness when he's needed to work. The witness spends time at the rental unit no more than 3 days per week, but never overnight.

The witness heard a conversation between the tenant and the previous manager about a smell in the carpet. The previous manager had to write a letter authorizing the tenant to replace it and the parties wrote out something together. The previous manager said she would give the tenant a copy. The witness assisted with replacing it and the underlay, and a friend who does that for a living helped out as well. The previous manager was happy about how it looked when it was done.

The witness further testified that there are no cuts in the kitchen linoleum, but there were black marks on the floor from the tenant's dishwasher.

The witness also testified that the landlord talks down to the tenant and is generally unpleasant toward her. He has told the tenant lots of times that the rental unit is unclean. The landlord also told a person who delivers Christmas hampers not to deliver one to the tenant because she wasn't a nice person and didn't deserve it. The witness made 2 attempts to serve the landlord with documents but the landlord refused to take them and didn't say why. The landlord also accused the tenant of having other people sleeping at the rental unit, but the tenant denied it and the landlord continued to say it louder and louder. He was mean and the tenant was crying.

The witness also verified that the washer made a noise and the witness told the tenant one leg was short but the tenant likely didn't hear it because she would go to bed after putting laundry in the washer and would put it in the dryer the next morning so it's fresh. Neighbours complained and the tenant fixed it. The walls are thin, and the witness can hear children and snoring from the adjoining unit from time-to-time.

The old fridge in the rental unit didn't work well, and the previous manager opened it, closed it and said it looked fine without checking the temperature gauge.

The witness also testified that a neighbour was using the tenant's hose. When the tenant told the neighbour not to, the neighbour told the tenant to "butt out." The witness had the summer off last year and in June, July and August, the neighbour used it and the witness put it away just before September. No one used the hose except the neighbour. The back yard was soaked most of August, and the tenant waters her garden with a watering can. A flood in August was caused by kids who used to live in the complex filling the window well with water and then they left. Water in the basement was not caused by the tenant, but there was a huge time lag between reporting it and receiving help from the landlord. It also took about 5 days for the landlord to deal with the plugged kitchen sink.

The witness also testified that when the mailbox was fixed the tenant didn't get a key right away, and when she did, it didn't work. The tenant has had to go to a post office for about 3 months, and the mailbox key still doesn't work properly.

The witness was not served with the notice to end the tenancy by the landlord's agents.

The witness also confirmed that the barbeque is not used, and that the tenant has not had transient fruit pickers staying at the rental unit. The items in the garage and basement belonged to the tenant's uncle who passed away and the tenant was dealing with his belongings.

The tenant's third witness (KL) testified that he was in the rental unit prior to removing the carpet, and that it had to be because of the tenant's dog. The previous manager of the rental complex called the witness stating that the new carpet had to be all one piece, had to have underlay, and no glue. She seemed happy with the job and contacted the witness again. The witness has experience of about 27 years with all sorts of floors. The witness also saw black scuff marks on the linoleum that would be easy to remove. The witness saw the floor today and the marks are gone and there are absolutely no cuts in the floor. The witness also fixed the washer because it made a constant banging on the floor while it shook. The noise stopped after the witness fixed it.

The witness has done hundreds of renovations, including mudding, drywall, painting, framing and has trained others as well, but does not have any certificates or journeyman tickets. He has been working for his father's business. The witness showed the tenant how to mud the walls to repair the pin-holes, and she's doing a fine job.

Analysis

It's clear in the evidence before me that the landlord and the tenant don't like each other. However, the parties have a contract, and the *Act* sets out certain ways that a tenancy ends. One is by the landlord serving the tenant with a 1 Month Notice to End Tenancy for Cause and where a tenant disputes such a notice, the onus is on the landlord to establish that it was issued in accordance with the *Act*, which can include the reasons for issuing it. The reasons for issuing it are in dispute.

I have reviewed the notice and I find that it is in the approved form and contains information required by the *Act*. The tenant and the tenant's boyfriend deny that he was given the notice and testified that he wasn't in town on February 26, 2015. The landlord and the landlord's witness (PS) testified that he is there all the time, apparently lives with the tenant, and the witness was present when it was served. I also consider the Proof of Service document provided by the landlord, which states that a person served it in that manner and on that date and is witnessed by the landlord's witness (PS) who also testified that it was served on the 26th. The tenant disputed the notice on March 9, 2015 and has not provided any evidence or testimony of when or how it was received. The tenant has applied for additional time to dispute it, but has not stated why it could

not be disputed within the time prescribed and the tenant's application for dispute resolution states that it was received on February 27, 2015. The *Act* requires a tenant to dispute such a notice within 10 days of service. If it was served on February 27, 2015, the tenant disputed it on time and doesn't need additional time, however if it was served on February 26, 2015, the tenant has not disputed it within the time prescribed. The tenant also testified that she had not received the Landlord's Application for Dispute Resolution yet has provided a copy of it in her evidentiary material. The tenant's evidentiary material also contains numerous letters to the landlord, but didn't comment on the testimony of the landlord or the landlord's witness who said none of those letters had ever been delivered to the landlord. I also consider the testimony of the landlord's witness (PBT) who said that he found the tenant to be manipulative and that the tenant pretended to be a member of a committee in an attempt to find out what complaints had been made to the landlord. I find that the tenant has intentionally conjured up evidence, and I accept the testimony of the landlord's witness (PS) that the notice was served to a person who apparently resides with the tenant on February 26, 2015, in accordance with the *Residential Tenancy Act*.

I also accept the testimony of the landlord's witness that the rental unit was so cluttered that a person could hardly walk through. The parties also spoke of large amounts of laundry piled up, which can be a safety hazard, however the tenant put it all in baskets when it was brought to her attention. The tenant also removed the propane tank on the barbeque, solving that issue of a fire hazard and the tenant's boyfriend testified that it isn't used.

Counsel for the landlord submits that the material term breached by the tenant was the clutter not under control, and in not working with the landlord by allowing contractors and the landlord in the rental unit so the landlord could address water issues. The landlord provided a letter to the tenant mentioning it, and the landlord testified that there didn't appear to be any change, and the tenant continued to deny entry to contractors.

The tenant also testified that she has a cat and is certain that written permission is required under the tenancy agreement, but hasn't decided whether or not to commit to a cat so has not sought permission. Whether the cat is a stray animal or not, I find that the tenant has breached that term of the tenancy agreement.

In the circumstances, I am satisfied that the landlord had cause to issue the notice, and it is not necessary to address all reasons contained in the notice. The tenant's application to cancel the notice is hereby dismissed. I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant. Since the tenancy is ending, I dismiss the tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement.

With respect to the landlord's application for an order permitting the landlord to keep the security deposit, the *Act* states that within 15 days after the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, the landlord must return the security deposit in full to the tenant or make an application for dispute resolution claiming against it. In order to make an application to keep it, the landlord must make a claim for damages or unpaid rent or unpaid utilities, and must prove the amounts. I order that the security deposit be dealt with in accordance with the *Residential Tenancy Act*. The landlord may make a claim against it after the tenancy has ended if there are damages beyond normal wear and tear at the end of the tenancy.

Since the landlord has been partially successful with the application the landlord is entitled to recovery of the \$50.00 filing fee, and I grant a monetary order in favour of the landlord for that amount.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety without leave to reapply.

The landlord's application for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit is hereby dismissed with leave to reapply after the tenancy has ended.

I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

I further grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$50.00.

These orders are final and binding and may be enforced.

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: May 08, 2015

Residential Tenancy Branch

