



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, ERP, RP, FF

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("the Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause ("the 1 Month Notice") pursuant to section 47;
- an order to the landlord to make repairs and/or emergency repairs to the rental unit pursuant to section 33; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The landlord attended with her manager/son ("the manager") who testified and made submissions on her behalf. The tenants presented one witness for the hearing. Tenant MM confirmed receipt by both tenants of the landlord's 1 Month Notice to End Tenancy on April 23, 2015. Tenant MM testified that he served an Application for Dispute Resolution on April 29, 2015. The landlord confirmed receipt of the tenants' package. The landlord and tenants confirmed receipt of additional evidence packages submitted by both parties and served to each other. I accept that the tenants were sufficiently served with the 1 Month Notice and that both parties received the other's dispute resolution hearing package for this hearing. The landlord made an oral application for an Order of Possession should the tenant's application to cancel the notice to end tenancy be unsuccessful.

### Issues to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Are the tenants entitled to an order to the landlord to make repairs and/or emergency repairs to the rental unit?

Are the tenants entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

This tenancy began on February 1, 2015 with a rental amount of \$1200.00 payable on the first of each month. The landlord testified that he continues to hold a \$600.00 security deposit paid by the tenants on the first day of tenancy (February 1, 2015). A copy of the residential tenancy agreement was submitted as evidence for this hearing.

The tenants continue to reside in the rental unit and applied to cancel the 1 Month Notice to End Tenancy issued by the landlord on April 23, 2015 to be effective June 1, 2015. The landlord's 1 Month Notice provided the following grounds to end the tenancy;

- that the tenant or a person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord; or
  - seriously jeopardized the health or safety or lawful right of another occupant or the landlord; or
- the tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The manager testified that, on March 1, 2015, Tenant MM telephoned him and indicated there was smoke in his suite. On seeking clarification, the manager testified that Tenant MM stated the downstairs tenants had cooked fish and there was still an odour in his unit. The manager testified that he attended that same evening to see if he could address any issue between the two tenants in his rental premises. The manager testified that, when he arrived, Tenant MM scolded him for interrupting his dinner and would not speak with him. The manager testified he had also asked Tenant MM to provide a rent cheque for March at that time and the tenants refused to provide a cheque.

The manager provided undisputed testimony that Tenant MM had changed the locks on the rental unit. He testified that, on several occasions, from March 2, 2015, he requested that the tenants provide him with a key for the new lock. The manager testified that, a short time prior to this hearing, the tenants provided him with a key. He testified that, when he tried the key at the residence, it did not work. Tenant MM confirmed that he changed the locks. He testified that the locks had not been changed from the previous tenancy. He also testified that he was told by the landlord to change the locks and he would be reimbursed. Both parties agreed that the cost to change the locks was deducted from the March 2015 rent cheque.

The manager testified that the tenants often requests non-essential repairs. The manager testified that, when he declines to make a repair that is unnecessary, the

tenant states he will make the changes to the rental unit himself and reduce the repair costs from his rent. Tenant MM testified that there are many repairs that should be done to the residence and that the landlord agreed to make those repairs prior to the tenants moving in. The manager and landlord both disputed that there was an agreement that repairs would be made at the rental unit.

The tenants provided a list of repairs sought including; changing of light bulbs throughout the residence; bedroom closet door damage in each bedroom; installation of window locks; new mirror in bathroom; towel racks added; toilet seat replacement; window blinds; kitchen countertop repairs; a second entrance door to be installed; exposed electrical wiring; mildew (mold) in front window; and leak in roof in bath and living room.

The tenants submitted photographic evidence to support his claim with respect to damages requiring repairs. They illustrate; an accordion-style bedroom closet with a mark in the top left corner; an old-style exterior window with a lower lock but no upper lock; a closet and small storage-type room with no door; a bedroom, kitchen and a dining room window without a lower lock but that does not show any other portion of the window; ceiling light fixtures with working bulbs but no covers; a toilet; a dated kitchen countertop; a doorbell in the corridor with no cover (showing wires); a rain-streaked window from different angles; living room ceiling with what Tenant MM describes as water damage; and the yard of the home. Tenant MM also claims that there are rats on the property and the landlord has done nothing to address this issue.

The landlord submitted correspondence in email and other forms from the tenants regarding the issues he identifies at the rental unit. The correspondence submitted by the landlord includes his responses. With respect to rats, the manager stated that this issue has been raised by Tenant MM to bolster his claim in this hearing. The landlord's other tenant on the residential premises submitted a witness statement indicating that she has seen no rats on the property.

Tenant MM submitted that the yard and lawn care at the home is insufficient. The manager testified that the other tenants are provided with a rent reduction to attend to lawn/yard care and he testified that they mow the lawn regularly in the appropriate seasons.

Tenant MM testified that the downstairs tenants use too much hot water and have their television on too loud at night. At the hearing, Tenant MM testified that he rarely speaks to the tenants downstairs and has very few issues with them. However, the landlord submitted a letter from the downstairs tenants that states that this tenant is aggressive

and hostile, often sending text messages or pounding on their door. She stated that, at times, he sends messages or yells to have her open her residence door. Tenant MM testified that the other tenants often would not respond when he wanted to complain to them. Tenant MM testified that the landlord would not act when he wanted him to act. The downstairs tenant also stated that she will move if this tenant is allowed to stay on the premises.

The manager testified, providing timelines and supporting documentation in evidence that, when the tenant has made a request that is the responsibility of the landlord to address, he has done so. He provided undisputed testimony that he repaired kitchen fans in both the upstairs and downstairs units after the tenant's complaint. He provided undisputed testimony that he has had contractors in to investigate the tenant's complaints with respect to a lack of hot water. He testified that those contractors have stated there is nothing wrong with the hot water system.

Tenant MM provided, as part of his written submissions, that he is "seeking compensation for lose [sic] of usage". He submitted a table that is reproduced here;

Without kitchen hood for 45 days \$5 per day	\$225
Changing front door lock/ installed light bulbs	\$60
Travel time to purchase lock/light blubs [sic]	\$20
With out [sic] dryer for 14 days	\$30
Sufferings from smoke due to no Ventilation in basement suite for 45 Days \$5 per days	\$250
Lose of hot water for 75 days	Judge to decide
Changed 2 Electric sockets 1 bed/1 living room	\$40
No towel rack in bathroom	Judge to decide
No closet door in 2 bed rooms	Judge to decide
Broken toilet seat	Judge to decide
Leaky roof	Judge to decide
Cost of moving out if the lease terminated before expiry and lost of wages.	\$1000
Cost of printing pictures	\$10.07

### Analysis

The manager provided sworn testimony that the tenant has significantly disturbed the other tenant in the residence. He submitted a witness statement in which the tenant describes feeling scared and threatened by the tenant. The manager provided sworn testimony that he is unreasonably disturbed by the tenant's response to requests for action at his rental unit. The manager provided documentary evidence in the form of the

other tenant's statement. The manager also provided copies of text and email messages where the tenant speaks in a very aggressive manner. The landlord, an elderly woman, testified that the tenant has yelled at her and tried to intimidate her in the past.

While Tenant MM denied some of the allegations in the manager's testimony and evidence with respect to his alleged bullying behaviour, the tenant also attempted to explain some of the behaviour. Tenant MM testified that the other tenants often would not respond when he wanted to complain to them. Tenant MM testified that the landlord would not act when he wanted him to act. Tenant MM testified at length at this hearing that he was deeply dissatisfied and frustrated with the rental unit throughout the course of his tenancy.

Based on the landlord's undisputed evidence, I am satisfied that the landlord had sufficient grounds to issue the 1 Month Notice and obtain an end to this tenancy for cause. The tenants made application pursuant to section 47(4) of the *Act* within ten days of receiving the 1 Month Notice. However, the landlord has provided sufficient evidence to show that the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord. This tenancy will end. Given the validity of the 1 Month Notice, and in consideration of the fact that Tenant MM has a child and has paid June rent, I find that the landlord is entitled to an Order of Possession dated June 30, 2015.

As the tenancy is ended, the tenant's application to request repairs is moot. I note that, while the tenants provided a type-written note seeking compensation to reduce his previous rent payments, he has not made a request for compensation under section 67 of the *Act* as part of his application. It is imperative that applications include all remedies sought prior to hearing so that the respondent can know the case against them. As the tenants did not advise in filing the application or in serving the landlord that they sought a monetary award or particularize any application for a monetary award, I cannot consider the tenants' "request" for monetary compensation. However, I do note that the tenants have provided no invoices or documentary evidence to reflect a monetary loss as a result of this tenancy or the actions of the landlord.

In all of the circumstances and based on the evidence provided at this hearing, I dismiss the tenants' application in its entirety. In accordance with section 55 of the *Act*, I grant the landlord an Order of Possession dated June 30, 2015.

Conclusion

I grant the landlord an Order of Possession dated June 30, 2015. If the tenant does not vacate as required, the landlord may enforce this Order in the Supreme Court of British Columbia.

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: June 24, 2015

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Residential Tenancy Branch

