



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Apartments R Us Property Management  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes:**

Tenant MO's application filed June 5, 2015: CNC; FF

Landlord's application filed July 14, 2015: OPC; MNSD; FF

### **Introduction**

This Hearing was convened to consider cross applications. The Tenant MO seeks to cancel a One Month Notice to End Tenancy for Cause issued May 28, 2015; and to recover the cost of the filing fee from the Landlord.

The Landlord seeks an Order of Possession; to retain the security deposit; and to recover the cost of the filing fee from both of the Tenants.

The Landlord's agent MW and the Landlord's witness gave affirmed testimony at the Hearing. Neither of the Tenants signed into the Hearing, which remained open for 25 minutes.

MW testified that the Tenant did not serve the Landlord with her Application for Dispute Resolution and Notice of Hearing. She stated that she hand delivered the Landlord's Notice of Hearing package and copies of the Landlord's documentary evidence to the Tenant JN at the rental unit on July 20, 2015, with the Landlord's agent TS as a witness.

She stated that she received a text message from the Tenant MO advising that she had moved out of the rental unit and that the Tenant JN remained living in the unit. MW stated that the Landlord had prepared a tenancy agreement adding the Tenant JN as a tenant, but that the Tenant JN had not signed it. MW stated that "the Ministry" has been paying rent on JN's behalf since April 2015. Therefore, I find that the Tenant JN and the Landlord have an oral tenancy agreement and that he is therefore a tenant and not merely an occupant. I find that the Tenant JN was duly served with the Notice of Hearing documents.

I find that the Tenant MO has abandoned her Application.

MW stated that the Landlord wished to keep the security deposit because the Tenants have done a lot of damage to the rental unit. She is not sure of the extent of the damage, but is sure that it is more than the security deposit. I dismissed this portion of the Landlord's Application, with leave to reapply once the extent of any damages have been determined.

### **Issues to be Decided**

- Is the Landlord entitled to an Order of Possession?

### **Background and Evidence**

#### Landlord's testimony:

This tenancy began with the Tenant MO on August 1, 2014. The Tenant JN moved into the rental unit at some point after the beginning of the tenancy. Rent was paid by "the Ministry" on the Tenant JN's behalf commencing April 1, 2015.

MW testified that the Tenants have caused a lot of damage to the rental unit due to backing up the toilet. She testified that the Tenants did not advise the Landlord when the toilet backed up and that the Landlords discovered it when the occupants below the Tenants complained on May 21, 2015 about water damage to their ceiling and flooding in their bathroom with foul smelling water. MW testified that the Tenants backed up the toilets twice in the last 2 months and that it happened again last weekend.

MW testified that she issued a Notice to End Tenancy for Cause on May 28, 2015 (the "Notice") which was given to the Tenant MO on May 28, 2015, at noon. The Landlord provided a copy of the Notice and a Proof of Service document, which is signed by the Tenant MO acknowledging receipt on May 28, 2015.

The Landlord's witness is a construction contractor, who has inspected the rental unit. He stated that raw sewage was running into the unit below, ruining the floor, subfloor and drywall. He testified that it appeared as if the Tenants were also using the bathtub as an alternate toilet. The witness stated that the rental unit was extremely cluttered so he could not do a full inspection. He stated that the front door had been kicked in and was not secure. He also stated that it appeared that the Tenant(s) were working on motor bikes in the rental unit. The witness stated that he would not be surprised if there was mould in the rental unit.

The Landlord provided photocopies of photographs in evidence.

### **Analysis**

When a landlord seeks an Order of Possession, the onus is on the landlord to provide sufficient evidence that the tenancy should end for the reasons provided on the Notice to End Tenancy. In this case, the Notice provides the following reasons for ending the tenancy:

Tenant or a person permitted on the property by the tenant has: seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and 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.

Tenant has caused extraordinary damage to the unit/site or property/park.

Tenant has not done required repairs of damage to the unit/site.

The photographs show a very cluttered living room with bike parts scattered about and debris piled up in the hallway along the walls. The photographs also show a very dirty toilet and bathtub with toilet plungers and other items in the bathtub. Based on the undisputed oral testimony of MW and the witness, together with the documentary evidence provided, I find that the Notice is a valid notice. I find that the Tenants have seriously jeopardized the health and safety of another occupant and put the Landlord's property at risk.

I accept the Landlord's evidence that the Notice was served on May 28, 2015. Therefore, I find that the tenancy ended on June 30, 2015. I find that the Tenants are overholding and that the Landlord is entitled to an Order of Possession effective 2 days after service of the Order upon the Tenants.

The Landlord has been successful in its application and I find that it is entitled to recover the cost of the \$50.00 filing fee from the Tenants.

Pursuant to the provisions of Section 72 of the Act, the Landlord may apply the security deposit in partial satisfaction of its monetary award. The balance of the security deposit must be applied in accordance with the provisions of Section 38 of the Act.

### **Conclusion**

The Tenant MO's Application is dismissed.

The Landlord's application to retain the security deposit for damages is dismissed **with leave to reapply**.

The Landlord is entitled to recover the cost of the \$50.00 filing fee from the Tenants and may deduct **\$50.00** from the security deposit.

I hereby provide the Landlord with an Order of Possession **effective 2 days after service of the Order upon the Tenants**. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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: July 29, 2015

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Residential Tenancy Branch

