



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes CNC, MNDC, OLC, PSF, RPP, LRE

### Introduction

This hearing dealt with the tenant's 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;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order requiring the landlord to return the tenant's personal property pursuant to section 65;
- an order to the landlord to provide services or facilities required by law pursuant to section 65; and
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

Both parties attended the hearing in the Burnaby Office of the Residential Tenancy Branch (the RTB) and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant confirmed that the landlord handed him the 1 Month Notice on June 27, 2015. I find the tenant was duly served with this notice that day in accordance with section 88 of the *Act*.

The tenant entered sworn testimony and written evidence that he served the landlord with his dispute resolution hearing package including a copy of the application and the Notice of Hearing by posting it on the landlord's door on July 5, 2015. Although this is not one of the methods identified in section 89(1) of the *Act* whereby a tenant can serve a landlord with an application for dispute resolution, the landlord testified that he did receive the tenant's application and written evidence posted on his door. In accordance with paragraph 71(2)(c) of the *Act*, I find that the hearing documents including the application for dispute resolution were not served by the tenant in accordance with section 89 of the *Act*, but were sufficiently served to the landlord for the purposes of the *Act*. The tenant's written and photographic evidence was served to the landlord in accordance with section 88 of the *Act*. The landlord did not serve the tenant with any written evidence.

### Preliminary Issues

At the commencement of this hearing, the landlord confirmed that he had not made any application for dispute resolution regarding this tenancy. At the hearing, he made an oral request for the issuance of an Order of Possession in the event that the tenant's application to dismiss the 1 Month Notice were dismissed.

Due to the range of issues identified in the tenant's application and the limited time available, I confirmed with the parties at the beginning of this hearing that I would first deal with the matter, which appeared to be of primary importance in this hearing, the landlord's 1 Month Notice. I explained that the burden of proof relating to an application to cancel a notice to end tenancy rests with the landlord, the person who issued that notice. I advised that if the tenancy were to continue and if we had time, I would also consider the tenant's request to have orders issued against the landlord to ensure that this tenancy continued in accordance with the terms that the tenant would have anticipated when this tenancy began. I informed the parties that it was unlikely that we would have enough time to consider the tenant's application for a significant monetary award totalling \$15,000.00.

As it turned out that we did not have time to consider all portions of the tenant's application and in accordance with the following provisions of Rule 2.3 of the RTB's Rules of Procedure, I exercised my discretion to dismiss the tenant's claim for a monetary award with leave to reapply.

*2.3 Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.*

### Issues(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? In the event that this tenancy were to continue, should any orders be issued against either of the parties?

### Background and Evidence

This periodic tenancy for the lower level of this rental home began on July 15, 2014. No Residential Tenancy Agreement was signed by the parties. The landlord and his family live upstairs from the tenant in the other living area of this rental home. Monthly rent was initially set at \$600.00, payable in advance on the first of each month. This rent increased to \$615.00 as of September 1, 2015. The landlord continues to hold the tenant's \$250.00 security deposit paid on or about July 15, 2014.

The landlord's 1 Month Notice entered into written evidence by the tenant identified the following grounds for the landlord's attempt to end this tenancy for cause by July 31, 2015:

*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;*
- *jeopardize a lawful right or interest of another occupant or the landlord.*

*Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property/park.*

At the hearing, the landlord testified that the tenant has not been engaged in any activity that could be identified as illegal. The landlord also testified that he is unaware of the tenant having given any false information to a prospective tenant. The landlord said that he has not listed the rental property for sale, so the tenant could not have given false information to a prospective purchaser.

The landlord produced no written evidence, nor did he present any witnesses to any of the behaviours he identified as the reason for his having issued the tenant the 1 Month Notice. Rather, he identified the following examples of the types of actions and behaviours that the tenant had exhibited during this tenancy, which the landlord maintained gave him sufficient reason to end this tenancy for cause:

- the tenant is noisy and interfering in the morning hours;
- the tenant has complained about someone walking around in the landlord's residence above the tenant's rental unit;
- the tenant has complained about the landlord spying on him;
- the tenant has shouted at the landlord's mother while she was in the garden;
- the tenant told the landlord's young children to not touch his electric scooter parked near the tenant's rental unit;
- the tenant watches his family through his window when they are in the yard;
- the tenant has shouted at the landlord's children;
- the landlord's 7-year old daughter was not able to hear him call for her when the tenant was showing her vegetables in the tenant's portion of the garden;
- the tenant has placed his property at risk by turning electric breakers off;
- the tenant turns exhaust fans in the kitchen and the bathroom on, which keeps the landlord awake, despite being asked to turn the bathroom fan off at night.

The tenant denied shouting at anyone in the landlord's family. The tenant said that his relationship with the landlord and his family started deteriorating once the tenant had to obtain an electric scooter to assist him with his mobility. He provided sworn testimony, written and

photographic evidence regarding a dispute over the location of that scooter. The landlord repositioned lumber under a covered section of the patio, which the tenant maintained restricted the tenant's ability to leave his electric scooter in a location protected from the weather. The landlord said that the tenant has occupied more space than he should be using in the covered patio area. He said that the tenant should place a large tool chest inside the rental unit rather than leaving it on the patio.

The tenant said that his health condition requires him to have the exhaust fans in the bathroom running at night in order to remove humidity from the air. He said that if the landlord were to install an air purifier, at an approximate cost of \$190.00, he would no longer need to run the exhaust fan in the bathroom at night. The landlord had no objection to this request. The tenant also gave sworn testimony and written evidence regarding what he considers to be the insufficient temperature of the hot water provided by the landlord. He provided written evidence that the landlord has failed to provide him with water sufficient to kill bacteria. The tenant gave written evidence that the temperature of his hot water could prove to be a breeding ground for Legionnaire's Disease.

#### Analysis -1 Month Notice

Section 47 of the Act reads in part as follows:

**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;...*

*(j) the tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property;...*

The term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offence under the *Criminal Code*. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.

The party alleging the illegal activity has the burden of proving that the activity was illegal. In this case, as the landlord provided no evidence of any illegal activity undertaken by the tenant, I dismiss the landlord's application to end this tenancy on the basis of any of the provisions of paragraph 47(1)(e) of the *Act* as outlined above.

I dismiss the landlord's attempt to end this tenancy for cause on the basis of paragraph 47(1)(j) of the *Act* as the landlord provided no evidence that the tenant had provided false information about the residential property to a prospective tenant or purchaser.

In considering the sole remaining areas the landlord identified in the 1 Month Notice, I find that the landlord's evidence, limited to his sworn testimony, was significantly lacking in demonstrating that this tenancy should be ended for cause. I find the examples provided by the landlord were relatively trivial in nature and reflect the reality of sharing a two-unit rental home with a tenant. For example, the landlord is responsible for ensuring that his young children do not touch the tenant's belongings such as the tenant's electric scooter. Similarly, the landlord is responsible for knowing where his children are in their yard. If he does not wish his children to have any contact with the tenant, it is up to him to take action with his children. In the absence of any written tenancy agreement with the tenant and in light of the tenant's undisputed assertion that the landlord gave him permission to plant a small garden, the tenant has a legitimate right to use parts of the yard for this home. The landlord's description of the incident involving his mother was vague and the landlord admitted that his mother speaks no English so has no idea what the tenant was saying to her. The landlord provided no evidence that he gave the tenant any written warning to discontinue any of his actions that could lead to an end to this tenancy.

While I realize that the landlord no longer wishes this tenancy to continue, the landlord must demonstrate that one of the reasons identified in his 1 Month Notice allows him to end the tenancy for cause. The landlord's evidence failed to identify that his property was at significant risk by the tenant's actions, nor did he demonstrate that there was any health or safety risk presented by a continuation of this tenancy. The landlord's evidence did not reveal that the tenant significantly interfered with or unreasonably disturbed the landlord or his family. In summary, I find that the landlord's 1 Month Notice was significantly deficient in the reasons identified for ending this tenancy.

For these reasons, I allow the tenant's application to cancel the 1 Month Notice. This tenancy continues.

Analysis- Tenant's Application for the Issuance of Orders

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing, the parties discussed the issues between them, engaged in a conversation, and were able to reach some limited agreement on some of the issues in contention in this continuing tenancy. Although these areas of agreement did not lead to a resolution of all issues in dispute, I have taken their circumstances into consideration in issuing orders, which I make in accordance with the powers delegated to me under sections 62(1) and (3) of the *Act*, which read in part as follows:

**62 (1) *The director has authority to determine***

*(a) disputes in relation to which the director has accepted an application for dispute resolution, and*

*(b) any matters related to that dispute that arise under this Act or a tenancy agreement...*

*(3) The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies...*

In accordance with these powers, I order the following as a means of attempting to resolve some of the items in dispute between the parties and so as to ensure that this tenancy agreement has an improved opportunity for success:

1. I order the landlord to increase the temperature in the water heater to a level that is at least 49 degrees Centigrade (or 120 degrees Fahrenheit).
2. I order the landlord to move lumber on the covered patio so as to enable the tenant to park his electric scooter under the roof of that patio without direct exposure to inclement weather.
3. I order the landlord to purchase, install and maintain an air purifier (at an approximate cost of \$190.00 including tax) for installation in the tenant's rental unit by September 30, 2015. This air purifier remains the property of the landlord.
4. I order the tenant to discontinue using the bathroom exhaust fan from at least the hours of 10:00 p.m. until 7:00 a.m. once the landlord purchases and installs the air purifier identified in Order #3.

**Conclusion**

The tenant's application to cancel the 1 Month Notice is allowed. The landlord's 1 Month Notice is of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

I also issue the four orders as outlined above and order both parties to abide by the terms of these final and binding orders.

I dismiss the tenant's application for a monetary Order with leave to reapply.

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: September 04, 2015

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Residential Tenancy Branch

