



## Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CITY OF VANCOUVER  
and [tenant name suppressed to protect privacy]

### **DECISION**

Dispute Codes      OPC; MT, CNC

#### Introduction

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

- an Order of Possession for cause, pursuant to section 55.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause, dated July 31, 2015 ("1 Month Notice") pursuant to section 66;
- cancellation of the landlord's 1 Month Notice, pursuant to section 47.

The tenant did not attend this hearing, which lasted approximately 21 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord confirmed that he is the resident manager for the rental building and an employee of the landlord company and that he had authority to speak as an agent on behalf of "landlord DDS" and the "landlord company" at this hearing (collectively "landlord"). The landlord confirmed that landlord DDS is an agent of the landlord company as well.

The landlord testified that the tenant was served with the landlord's application for dispute resolution hearing package ("Application") on September 8, 2015, by way of posting to his rental unit door. The landlord confirmed that landlord DDS witnessed this service. Posting of an application requesting an order of possession under section 55, is permitted by section 89(2)(d) of the *Act*. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's Application on September 11, 2015, three days after its posting.

The landlord testified that he received the tenant's application for this hearing. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's Application.

The landlord testified that the tenant was served with the landlord's 1 Month Notice on July 31, 2015, by way of posting to his rental unit door. A copy of a signed, witnessed proof of service was provided. The landlord confirmed that this proof of service was signed by landlord DDS, who witnessed the service. In accordance with sections 88 and 90 of the Act, I find that the tenant was deemed served with the landlord's 1 Month Notice on August 3, 2015, three days after its posting.

#### Preliminary Issue – Dismissal of Tenant's Application

Rule 10.1 of the Rules of Procedure provides as follows:

**10.1 Commencement of the dispute resolution proceeding:** The dispute resolution proceeding must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the dispute resolution proceeding in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

**In the absence of the tenant's participation in this hearing, I order the tenant's entire application dismissed without leave to reapply.**

#### Issues to be Decided

Is the landlord entitled to an Order of Possession for cause?

#### Background and Evidence

The landlord testified that this month-to-month tenancy began on March 27, 2014. Monthly rent in the amount of \$375.00 is payable on the first day of each month. A security deposit of \$187.50 was paid by the tenant and the landlord continues to retain this deposit. The landlord testified that the tenant continues to reside in the rental unit. A copy of the written tenancy agreement was provided for this hearing.

The landlord's 1 Month Notice indicates an effective move-out date of September 1, 2015. The landlord issued the notice for the following reasons:

*Tenant or a person permitted on the property by the tenant has:*

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*

*Tenant has engaged in illegal activity that has, or is likely to:*

- *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.*

The landlord stated that the tenant engaged in illegal activity by making inappropriate sexual comments and gestures towards two female advocates at the rental building on September 19,

2014. The landlord issued a warning letter, dated September 20, 2014, to the tenant regarding this behaviour and possible future eviction if the behaviour continued. A copy of the letter was provided for this hearing. The landlord further indicated that in August 2015, the tenant threatened another occupant in the building and had a box cutter that he threatened to use when he spoke with the landlord about the incident after.

The landlord indicated that the tenant causes excessive noise during late night and early morning hours in his rental unit and in the rental building. The landlord testified that the tenant builds things during these hours, causing disturbance to other occupants, who have complained to the landlord about excessive noise. The landlord stated that the tenant has been belligerent when confronted by the landlord about this noise. The landlord stated that an alternative rental unit was offered to the tenant, located in the corner with only one neighbour, but the tenant refused this unit and did not give the landlord a reason why. A copy of the landlord's notes, dated May 6, 2015, was provided regarding the above statement. The landlord provided copies of letters, dated June 23, 2014 and April 7, March 11 and July 3, 2015, sent to the tenant regarding this behaviour and the jeopardy to his tenancy. The landlord explained that this behaviour has continued after July 3, 2015 until the day before this hearing, when the tenant was found building a bicycle at 1:00 a.m. in the lobby of the building, causing excessive noise.

### Analysis

Section 55(1) of the *Act* reads as follows:

*55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

- (a) the landlord makes an oral request for an order of possession, and*
- (b) the director dismisses the tenant's application or upholds the landlord's notice.*

Based on the landlord's undisputed testimony at this hearing, I am satisfied that the landlord issued the 1 Month Notice for valid reasons. I find that the tenant significantly interfered with and unreasonably disturbed other occupants and the landlord by causing excessive noise during late night and early morning hours. The landlord issued numerous complaint letters to the tenant, warning about his behavior and possible eviction, and the tenant did not rectify his behaviour. The landlord indicated that the day before this hearing, the tenant continued to cause excessive noise in the rental building during late night hours. As I have found one ground indicated on the 1 Month Notice to be valid, I need not explore the other ground.

The next issue is whether the landlord waived his right to pursue the 1 Month Notice. Residential Tenancy Policy Guideline 11 discusses the issue of waiver of a 1 Month Notice:

*A Notice to End Tenancy can be waived (i.e. withdrawn or abandoned), and a new or continuing tenancy created, only by the express or implied consent of both parties. The question of waiver usually arises when the landlord has accepted rent or money payment from the tenant after the Notice to End has been given. If the rent is paid for the period during which the tenant is entitled to possession, that is, up to the effective date of the Notice to End, no question of "waiver" can arise as the landlord is entitled to that rent.*

*If the landlord accepts the rent for the period after the effective date of the Notice, the intention of the parties will be in issue. Intent can be established by evidence as to:*

- whether the receipt shows the money was received for use and occupation only.*
- whether the landlord specifically informed the tenant that the money would be for use and occupation only, and*
- the conduct of the parties.*

*There are two types of waiver: express waiver and implied waiver. Express waiver arises where there has been a voluntary, intentional relinquishment of a known right. Implied waiver arises where one party has pursued such a course of conduct with reference to the other party so as to show an intention to waive his or her rights. Implied waiver can also arise where the conduct of a party is inconsistent with any other honest intention than an intention of waiver, provided that the other party concerned has been induced by such conduct to act upon the belief that there has been a waiver, and has changed his or her position to his or her detriment. To show implied waiver of a legal right, there must be a clear, unequivocal and decisive act of the party showing such purpose, or acts amount to an estoppel.*

The landlord testified that he accepted rent payments for September, October and November 2015, such that the tenants' rent is paid in full. Although the landlord accepted rent after the effective date on the 1 Month Notice of September 1, 2015, I do not find this to be a waiver of the 1 Month Notice. This is despite the fact that the landlord did not issue rent receipts indicating "use and occupancy only" to the tenant. The tenant did not withdraw his Application to cancel the 1 Month Notice, at any time prior to this hearing. The landlord submitted written evidence for this hearing that supports the 1 Month Notice and the landlord's intention to evict the tenant. The landlord testified that he spoke with the tenant verbally on a number of occasions, including the day before this hearing, and advised him that he was only accepting rent until a determination was made regarding the tenancy at this hearing. This is recent evidence of the landlord's intention to pursue the 1 Month Notice and obtain an order of possession against the tenant.

For the above reasons, and given the conduct of the parties, I find that the landlord did not waive his rights to pursue the 1 Month Notice and he did not waive the 1 Month Notice, whether

expressly or impliedly. I find that the landlord did not intend to reinstate this tenancy, despite accepting rent payments after the effective date stated on the 1 Month Notice.

Based on my decision to dismiss the tenant's Application and uphold the landlord's 1 Month Notice, I find that this tenancy ended on the corrected effective date of the 1 Month Notice, September 30, 2015. At the hearing, the landlord requested an order of possession effective on January 1, 2016, in order to allow the tenant additional time to vacate the rental unit. Accordingly, I find that the landlord is entitled to an Order of Possession, effective at 1:00 p.m. on January 1, 2016.

### Conclusion

I grant an Order of Possession to the landlord **effective at 1:00 p.m. on January 1, 2016**. Should the tenant or any other occupants on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The tenant's entire application is dismissed without 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: November 05, 2015

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Residential Tenancy Branch