



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding GREATER VICTORIA HOUSING SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, OLC, AAT, FF

### 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;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70; 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. Both parties confirmed receipt of the other's evidentiary submissions for this hearing. At the outset of this hearing, the tenant withdrew her application for an order requiring the landlord to comply with the Act as well as her application for an order to allow access to her rental unit. She also withdrew her application to recover the filing fee for this matter. The landlord made an oral application for an Order of Possession of the rental unit should the tenant be unsuccessful in her application to cancel the notice to end tenancy.

### Issue to be Decided

Should the landlord's 1 Month Notice be cancelled?

If not, is the landlord entitled to an Order of Possession?

### Background and Evidence

The landlord submitted documentary materials and testified that the residential tenancy agreement for this rental unit began on February 7, 2003. The current rental amount is \$418.00

payable on the first of each month with third party assistance. No security deposit was taken by the landlord at the start of this tenancy.

On September 24, 2015, the landlord issued a 1 Month Notice to End Tenancy for Cause relying on the following grounds;

- *The 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;*
  - *put the landlord's property at significant risk; 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.*

By way of background, the landlord supplied and referred to documentary evidence from the past several years (2012-2015) including a previous 2013 decision of the Residential Tenancy Branch ("RTB") that produced a settlement between the parties. That settlement required certain action by the tenant in reducing the possessions within her rental unit. The landlord testified that the tenant has not taken steps. The landlord produced photographs showing an overwhelming amount of items in the rental unit, with little access for entry. The landlord testified that those photographs were from January 2015 but that she had personally attended to the residence on at least three occasions since then. The landlord testified that she visited most recently within the past two months and she provided undisputed sworn testimony that the "situation has gotten worse".

The tenant testified that she is working at her own pace to clean her rental unit. She expressed anger and frustration, stating that she suffers from a variety of health issues that make clean-up very difficult and slow. She testified that she has had a lack of help from the landlords or any other agency. The landlord disputed this testimony, listing several agencies that had been referred and had in fact attended to assist the tenant in reducing her belongings. The landlord testified that the tenant often sent the people from these agencies away.

The landlord provided copies of several letters to the tenant as evidence including but not limited to the following letters;

- Dated March 2, 2015: "You must significantly reduce the number of items in your apartment for ease of access to all rooms..." with enclosed community care contact information;
- Dated April 24, 2015: Post-inspection letter advising that amount of "stuff" is fire hazard and requiring reduction in amount of items in unit, providing guidelines – letter also states, "Failure to have the suite meet the required standards will result in a Notice to End a Residential Tenancy being issued."
- Dated July 6, 2015: advise tenant she needs to remove items to bring unit to health and safety standard: advises of August follow-up inspection; and
- Dated September 24, 2015: Post-inspection letter attached to Notice to End Tenancy: mentions previous offer of community care providers' information.

Both parties agreed that the fire marshal for this residential area had visited the premises on more than one occasion in recent years. The tenant stated the fire marshal said “the place was coming along alright” while the landlord stated that the fire marshal expressed serious concerns with respect to the safety of the rental unit and the tenant. In the documentary evidence, the landlord's correspondence with the tenant refers to the fire marshal's concerns.

### Analysis

The tenant applied to cancel the landlord's 1 Month Notice to End Tenancy. When a tenant makes an application to cancel a notice to end tenancy, the burden shifts to the landlord to show, on a balance of probabilities, that the Notice to End Tenancy was justified and that the tenancy should end. In this case, the landlord relies on three separate grounds;

- *The 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;*
  - *put the landlord's property at significant risk; 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.*

While the landlord has provided some evidence and supposition that the tenant has jeopardized the health or safety of another occupant, I find that the landlord has not proved this ground sufficiently. The landlord has provided evidence that the tenant has failed to follow the steps outlined in a previous residential tenancy decision through settlement and has been warned numerous times, and offered assistance, to reduce her belongings and ensure that her rental unit is safe from hazard. I find that the landlord has proved that, on a balance of probabilities, the tenant has breached a material term of the tenancy and put the landlord's property at significant risk.

I accept the photographic and documentary evidence as well as the testimony of the landlord that the tenant's rental unit is overflowing with possessions and junk. I accept the landlord's evidence that the tenant has not made satisfactory efforts within a reasonable time to reduce the possessions and junk within her unit. I find that the tenant is not excused because of her health issues and has been offered many opportunities and assistance to accommodate her health considerations.

Based on all of the 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. In these circumstances, the tenant's application to cancel the 1 Month Notice is dismissed.

At this hearing, the landlord made an oral request for an Order of Possession. 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.

Therefore, given this provision of the *Act*, I provide the landlord an Order of Possession dated January 31, 2016 (as the date requested by the landlord at this hearing).

### Conclusion

The landlord is provided with a formal copy of an Order of Possession effective January 31, 2016. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of 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: December 10, 2015

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Residential Tenancy Branch

