



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

CNC

### Introduction

This hearing was convened as a result of the Application for Dispute Resolution filed by the tenant for dispute resolution under the *Residential Tenancy Act* (the “*Act*”). The tenant applied to cancel a 1 Month Notice to End Tenancy for Cause dated May 29, 2016 (the “1 Month Notice”).

The tenant, an agent for the landlord (the “agent”), a former manager for the landlord, and four witnesses attended the teleconference hearing. An opportunity was given to the parties to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me.

Neither party raised any concerns regarding the service of documentary evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue to be Decided

- Should the 1 Month Notice be cancelled or upheld?

### Background and Evidence

The parties agree that the tenancy began in April of 1995.

The parties also agree that the landlord served the 1 Month Notice dated May 20, 2016 that the tenant received on or about May 30, 2016 and disputed within two days on June 1, 2016, which is within the time period provided for under section 47 of the *Act*. A copy of the 1 Month Notice was submitted in evidence. The effective date listed on the 1 Month Notice is July 1, 2016. The tenant continues to occupy the rental unit and expressed her desire to continue to occupy the rental unit.

The landlord has alleged two causes on the 1 Month Notice, namely:

1. 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, and
2. The tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.

The agent referred to a letter dated April 26, 2016 dated by two agents for the landlord R.C. and K.A. which reads in part that on April 19, 2016, R.C. and K.A. inspected the rental unit and as they entered the rental unit they:

"...were greeted by a strong smell of urine, and the scampering of approximately ten mice, as well as the hovering of 30 or so flies. Upon further inspection we notice lots of mouse droppings through out the suite. We also noticed the continuous comings and goings of the rodents we could not actually make a proper tally, but I would guess we were seeing an infestation of more than 30 mice. The mice seemed to show no fear of us. They were in all the rooms and had an open pathway in the walls.

There was a note on the door for us telling it was mouse season and we were not allowed to set any traps or place poisons. We did not..."

[reproduced as written]

The tenant did not dispute the contents of this letter and simply replied that "there were a lot of mice at that time". The tenant did not deny placing food out for the mice and spoke of peanut butter and marshmallows. The tenant also agreed that she had previously denied an attempt for pest control contractors to treat her rental unit for mice. The tenant's position is that she preferred a humane way to deal with the mice.

The landlord submitted a copy of a previous arbitrator dated May 11, 2016, the file number of which has been included on the cover page of this decision for ease of reference. While the tenant applied for a Review Consideration of the May 11, 2016 decision, that Review Consideration Application was dismissed on June 7, 2016. In that decision the arbitrator writes on page 17:

"...I am not satisfied from the evidence before me that the landlord has not made attempts to deal with the mice problem some of which appear to have been created by the tenant in encouraging the mice to live in her unit in cages, in nursing any sick mice back to health and by providing a food source for the mice in the humane traps. While this may be considered to be admirable approach by the tenant to prevent mice suffering I feel her methods is not allowing the landlord to deal with the mice problem in her unit effectively has only exasperated the problem in the tenants unit and potentially the rest of the building..."

[reproduced as written]

In addition on page 19 of the same decision the arbitrator writes:

“...I also find that as the tenant refused to allow the landlord to deal with the mice in her unit the tenant below suffered as a consequence of her actions and had an infestation of mice because the tenant was keeping them in her unit and would not allow the landlord to deal with it...”

[reproduced as written]

Witness O.M. testified under oath that the tenant denied them the ability to treat her rental unit and asked them to leave citing that their notice of entry time had expired which the tenant did not dispute. During cross-examination of the witness by the tenant, in response to the tenant's question whether the tenant asked about any other options to treat the mice the witness replied that the tenant said she was catching and releasing the mice.

### Analysis

Based on the documentary evidence and testimony of the parties and witnesses, and on the balance of probabilities, I find the following.

I am satisfied in considering the evidence before me that the 1 Month Notice is a valid notice and is upheld. As a result, **I dismiss** the tenant's application **without leave to reapply**. In reaching this conclusion I have considered that the tenant admitted to refusing treatment in her rental unit for the mice and that she has provided a food source for the mice. I have also considered the findings of the previous arbitrator which determined that the tenant refused to allow the landlord to deal with the mice in the rental unit and that the tenant below suffered as a consequence.

While the tenant may have had good intentions to deal with the mice humanely, I find her actions have resulted in continuing infestation of mice in her rental unit which as negatively impacted other tenants in the building and has placed the landlord's property at significant risk. Section 55 of the *Act* applies and states:

### **Order of possession for the landlord**

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 to the landlord an order of possession of the rental unit if**

(a) **the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and**

**(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.**

[my emphasis added]

Given the above and taking into account that the effective vacancy date of the 1 Month Notice is July 1, 2016, I grant that the landlord an order of possession **effective July 1, 2016 at 1:00 p.m.**

### Conclusion

The tenant's application is dismissed without leave to reapply. The 1 Month Notice dated May 20, 2016 is upheld and is valid.

The landlord is granted an order of possession effective July 1, 2016 at 1:00 p.m. The tenancy ends on July 1, 2016 at 1:00 p.m. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 30, 2016

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Residential Tenancy Branch