



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, MT, O

### Introduction

This hearing convened as a result of a Tenants' Application for an Order canceling a 1 Month Notice to End Tenancy for Cause issued on March 31, 2016 (the "Notice"), and an Order for more time pursuant to section 65(1).

Both parties appeared at the hearing. The Landlord's representatives are noted on the cover page of this my Decision. Y.B. spoke on behalf of the Landlord. The Tenant, R.S., appeared on his own behalf and as agent for the other Tenant, R.V. In attendance for the Tenant was R.S.'s brother, M.S. as well as an assistant E.R.

The hearing process was explained and the participants provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

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.

### Preliminary Matter

The Tenants erroneously noted the Landlord as Y.B. on the application; while she is an employee, she is not the named Landlord. The Tenants also forgot to note the unit number of the rental unit on the application. Pursuant to section 64(3)(c) I amend the application to correctly note the Landlord as the G.V.H.S. and to accurately note the address of the rental unit.

Issues to be Decided

1. Should the Tenants be granted more time to make their application for dispute resolution pursuant to section 66(1) of the *Residential Tenancy Act*?
2. Should the Notice be cancelled?

Background and Evidence

Y.B. testified that the Notice was personally served on the Tenant on March 31, 2016. The Tenants made their application on April 25, 2016 such that their application was made outside the time limits imposed by section 47 of the *Residential Tenancy Act*. The Tenants applied for more time pursuant to section 66(1). That section allows me to extend a time limit in exceptional circumstances.

The Tenant, R.S., testified that he received the Notice on March 31, 2016 and did not apply to dispute it as he did not believe he was able to do anything about it. He stated that he is physically and mentally disabled, as is the other Tenant, R.V.

The Tenant's brother M.S. also testified on behalf of the Tenants. M.S. said that the Tenant, R.S., manages his financial and legal matters on his own, although he did have a social worker. He stated that he spoke to the Tenants on April 20, 2016. He said R.S. told him that he had to move because of the eviction notice. M.S. testified that he then read the 1 Month Notice and realized the Tenants needed to apply

At the conclusion of the Tenants' evidence on the issue of more time, Y.B. confirmed that the Landlord did not oppose the Tenants' request for more time. Accordingly, I grant the Tenants more time pursuant to section 65(1).

*Residential Tenancy Rules of Procedure* provide that when a Tenant makes an application to dispute a notice to end tenancy the Landlord must present their case first as the Landlord must prove the grounds for ending the tenancy.

The Landlord's representative Y.B. testified with respect to the tenancy and the Notice as follows.

She stated that this tenancy began on December 1, 2009. She confirmed that the rental unit is subsidized and the Tenants' current portion of the rent is \$510.00. At the time the tenancy began the Tenants' portion was \$362.00.

The Landlord issued the Notice on March 31, 2016. The reason set out in the Notice was that the Tenant has caused extraordinary damage to the rental unit. Y.B. confirmed that the damage is both inside the rental unit as well as in the common areas.

Y.B. stated that there have been difficulties with the Tenants but that she has tried working with the Tenants for a number of years to maintain their tenancy. She stated that in 2012 she issued another notice to end the tenancy due to the condition of the rental unit. Introduced in evidence was a Decision made November 19, 2012 wherein the parties agreed to an end of the tenancy effective January 31, 2013. Y.B. testified that at that time, the Tenants could not find another rental unit, despite the Landlords' efforts to help the Tenants find appropriate housing. Y.B. confirmed that when the Tenants could not find another place to live, the tenancy continued, although the parties did not enter into a new written tenancy agreement.

Y.B. further testified that after the 2012 Decision, a supportive service came to the rental unit to assist the Tenants with cleaning.

She stated that the problems with the condition of the rental unit continue. In November 2015, when the boiler was being replaced, the workers refused to go into the rental unit because of its condition. A letter was sent to the Tenants setting out the Landlords' concerns in this regard and was introduced in evidence. In this letter the Landlord writes:

“ ...

*The heating contractors have refused to enter your unit to do the necessary upgrade repaired to complete the Boiler Replacement Project. Your tenancy is in jeopardy.*

*You have 1 week to have the unit cleaned up enough to allow the contractors to safely do the work required. On November 12 at 10:00 a.m. an inspection of your unit will be held to ensure that the work can be done on that day or as soon as it can be scheduled.*

*If you are unable to have the unit cleaned up before the time indicated above you are asked to contact the undersigned at [phone number withheld].*

...”

Y.B. testified that she then began doing suite inspections. Introduced in evidence were photos taken of the rental unit on January 20, 2016 and March 1, 2016, which depicted significant mess both inside the rental unit and on the balcony. In most photos, the

floors are shown as being covered in clothing and stacked boxes. The balcony shows a table covered in refuse and cigarette butts. The blinds to the exterior door are also significantly damaged. These photos also show significant damage to many of the interior walls which in some places were covered by duct tape.

The Landlord also submitted photos of the walls and corners of the common areas taken March 10, 2016, March 16, 2016, March 17, 2016, March 21, 2016, and April 12, 2016. These photos also show significant damage to the walls.

The Tenants were issued another warning letter on January 28, 2016. This letter was also introduced in evidence. In this letter, Y.B., confirms that during the inspection on January 20, 2016 the rental unit was shown to be not up to health and safety standards. The Tenants were given specific instructions on the cleaning that was required. The Landlord also informed the Tenant that he needed to operate his scooter in a manner that does not destroy the property. The Tenants were given until February 29, 2016 to rectify the situation.

On March 1, 2016 the Landlord wrote another letter to the Tenants. She confirmed that while the broken furniture had been removed, the rental unit continued to be below an acceptable standard for health and safety reasons. She again provided the Tenants with specific instructions regarding cleaning the balcony, the kitchen and the carpets. The Landlord reminded the Tenants that the rental unit is non-smoking and that smoking was not permitted on the balconies. She also writes that the balcony continues to be covered in cigarette butts. In this letter, the Landlord also informs the Tenants that the common area hallways are being repaired and re-carpeted and that if the Tenants continue to damage the walls they will be charged and issued a Notice to End Tenancy.

Y.B. testified that despite the warning in the March 1, 2016 letter, the Tenants continue to damage the newly repaired walls in the common area. For this reason, as well as the Tenants damage to the rental unit, the Landlord seeks to end the tenancy.

The Tenant R.S. testified on behalf of the Tenants. He stated that the building is not accessible and as a result he does hit the walls.

R.S. also stated that there are only two holes in the walls in the rental unit and he said that happened two years ago when he first got his scooter and he was just getting used to driving it. He said he wanted to fix the holes and the Landlord told him not to.

R.S. confirmed that he and the other Tenant have assistance with their cleaning twice a week on Tuesday from 1:00 p.m. to 4:00 p.m. and on Friday from 1:30 p.m. to 2:30 p.m.

He stated that they also have assistance every night as the support workers come from 4:00 p.m. to 5:00 p.m. every day to help with cleaning and cooking.

R.S. claimed that the rental unit is now clean and that the photos that were provided by the Landlord are old. He also said he is willing to pay for the damage to the hallway and his apartment.

M.S. further testified that there is no practical place for the Tenants to go as they are both disabled.

### Analysis

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Tenants' Application to cancel the Notice must be dismissed.

I find the Landlord has proven that the Tenants, have caused significant damage to the rental unit for the following reasons.

I accept the Tenants' evidence that they have weekly assistance with cleaning. Despite this assistance, the photos submitted in evidence show that the rental unit is not maintained in a reasonable manner.

I find the Tenants have breached section 32 of the *Residential Tenancy Act* by failing to maintain reasonable health, cleanliness and sanitary standards in the rental unit. I find that the Tenant and his spouse are not maintaining the rental unit in a reasonably healthy and sanitary manner, and that they have caused significant damage to the rental unit walls and carpeting due to their actions and neglect. I also find that they have caused significant damage to the common area hallway walls.

I also find that the Tenants have been sufficiently warned that their inability to maintain their rental unit and continued damage of the walls would result in an end to their tenancy.

The Tenants submitted that the rental unit had been significantly cleaned since receiving the Notice. They also submitted they were prepared to pay for the damage to the wall.

While I accept the rental unit may have improved over the past while since this latest Notice was issued, it appears that the Tenants have a pattern of ignoring or neglecting the cleanliness of the rental unit until forced to do so by the Landlord. I note this is the

second time the tenancy has been in jeopardy due to the condition of the rental unit. Section 32 of the *Act* requires the Tenants to conduct ongoing cleaning to maintain the cleanliness and sanitary condition of the rental unit and not just in an attempt to cancel another Notice to End Tenancy issued by the Landlord.

For these reasons, I dismiss the Tenants' application. The tenancy shall end in accordance with the Notice. Pursuant to section 55 of the *Residential Tenancy Act*, the Landlord is granted an Order of Possession.

Therefore, I grant the Landlord an Order of Possession **effective 1:00 p.m. on June 30, 2016**. This Order must be served on the Tenants and may be filed and enforced in the B.C. Supreme Court if necessary.

#### Conclusion

The Tenants' application to cancel the Notice is dismissed. The Landlord is granted an Order of Possession **effective 1:00 p.m. on June 30, 2016**.

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: June 07, 2016

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Residential Tenancy Branch