



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MT, CNC

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking more time than prescribed to dispute a notice to end the tenancy and for an Order cancelling a notice to end the tenancy for cause.

The landlord and one of the tenants attended the hearing, each gave affirmed testimony, and the tenant was assisted by a Legal Advocate. The parties were given the opportunity to question each other and give closing submissions. No issues were raised with respect to service or delivery of documents or evidence, and all evidence provided by the parties has been reviewed and is considered in this decision.

### Issue(s) to be Decided

- Should the tenants be granted more time than prescribed to dispute the notice to end the tenancy?
- Has the landlord established that the 1 Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?

### Background and Evidence

**The landlord** testified that she is not the owner, but the property manager of the rental unit, which is a duplex and the other half is also tenanted. This month-to-month tenancy began on July 1, 2013 and the tenants still reside in the rental unit. A copy of the tenancy agreement has not been provided, however the landlord testified that rent in the amount of \$900.00 per month is currently payable on the 1<sup>st</sup> day of each month, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$437.50 which is still held in trust by the landlord, and no pet damage deposit has been collected. A move-in condition

inspection report was completed at the beginning of the tenancy but a copy has not been provided for this hearing.

The landlord further testified that the tenants were given notice on April 10, 2016 for an inspection of the rental unit on April 15, 2016. When the landlord and the owner attended to complete the inspection on April 15, 2016, numerous disturbing damages were noticed. The back door was fractured and the dead bolt had been pushed right through leaving a hole. The landlord asked the tenant what happened and the tenant replied that it happened about 5 months earlier and was due to a break and enter incident, but the tenants hadn't told the landlord about it. Also, the laminate strip was ripped off the vanity in the bathroom, closet doors were off, the door to the 2<sup>nd</sup> bedroom was hanging only by the top hinges, blinds were broken, and the home was very unkempt.

The landlord personally served one of the tenants with a 1 Month Notice to End Tenancy for Cause on April 15, 2016, a copy of which has been provided. It is dated April 15, 2016 and contains an effective date of vacancy of May 31, 2016. The reasons for issuing the notice state:

- Tenant has caused extraordinary damage to the unit/site or property/park;
- Tenant has not done required repairs of damage to the unit/site.

The tenant called the landlord that night very upset and said that the tenants were not leaving, so the landlord agreed to a new inspection for April 22, 2016. When the landlord arrived, all repairs were made except the closet doors and back door. Where the dead bolt was, is now filled with putty which was still wet when the landlord inspected. Also, the lock on the laundry room, which is beside the house, had been removed and the door was left open. The tenant again mentioned a break and enter incident, and said the tenants found guns and weapons in the back yard and that the tenant's computer had been smashed. She told the landlord that the police refused to do anything about it, and the break and enter could have been done by her son or his friends. Also, a neighbour witnessed the tenants' daughter kick a panel out of the fence. Copies of statements from 2 other people have also been provided, both dated May 18, 2016. The second letter is from the neighbour next door to the rental unit. The landlord feels threatened by the tenants and takes someone with her when she attends the rental unit. The other tenant has been aggressive to the landlord in the past, and the tenant who attended this hearing has left numerous messages on the landlord's phone saying that the tenants are not leaving and the papers the landlord provided have gone into the garbage.

On May 1, 2016 the landlord attended the rental unit to collect rent and was met by the other tenant who said he was advised by an Arbitrator that since there was an eviction notice, he didn't have to pay. The landlord left and the next day gave to the tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which has also been provided. It is dated May 2, 2016 and contains an effective date of vacancy of May 13, 2016 for \$325.00 of unpaid rent that was due on May 1, 2016. On May 6, 2016, the tenant called the landlord asking for the landlord to attend to get the rent money and asked for another copy of the 1 Month Notice to End Tenancy for Cause. On May 7, 2016 the landlord attended, collected the rent, and gave an amended copy of the 1 Month Notice to End Tenancy for Cause, which contained the 2 reasons for issuing the notice. The original notice given had only one reason, and the landlord added the second reason before giving the copy to the tenant.

**The tenant** testified that the broken door was not mentioned to the landlord out of embarrassment. The tenants didn't know how to fix it. When the landlord arrived to do the inspection, the deadbolt was out because the tenants had been trying to fix it, and the tenant was honest with the landlord about it. The tenant believed that the way it works, is the landlord gets it fixed professionally and the cost comes out of the damage deposit. The tenants did the best they could and the landlord told them to put the dead bolt on the door knob. When the landlord returned for the second inspection she said the whole place looked fine.

The tenant further testified that wear and tear happens and the house is at least 50 years old. The tenants repaired the trim in the bathroom, but it had been re-glued several times before. There never was a lock, but a metal door latch on the laundry room door. There are pieces broken off some blinds, but they're 25 years old and those pieces broke.

The tenant also denies telling the landlord anything about finding guns or weapons on the property, but said gloves and a miniature baseball bat. Further, during a massive windstorm in April, the entire fence collapsed. The landlord had someone fix it but it wasn't entirely completed. No boards were kicked out.

The tenant also denies that the other tenant has been aggressive toward the landlord. When the landlord served the notice to end the tenancy the first time, he asked the landlord what it was and the landlord walked away refusing to reply until she was getting into the truck. There was no other conversation. Further, the tenant only left one message on the landlord's phone saying that she had thrown away the notice because the landlord had told the tenant during the 2<sup>nd</sup> inspection that everything was fine. The next day, April 23, 2016, the landlord called the tenant saying that she was going to stand firm. The tenant was shaken and very upset and asked why. The landlord

replied that the door wasn't fixed good enough. Then during the first week of May, the landlord called the tenant saying she had someone moving in on June 1 but the tenant advised that she had disputed the notice. The landlord said it was too late for that, however the tenant served the Tenant's Application for Dispute Resolution and notice of this hearing by registered mail on May 13, 2016. On June 1, 2016 the landlord collected rent from the tenants.

With respect to the tenants' application for more time than prescribed to dispute the notice, the tenant testified that she didn't know how to dispute it. She called the BC Inquiries line, and the tenant received instructions, then made an appointment with the Legal Advocacy program. The tenant believed everything was fine after the landlord had been there for the 2<sup>nd</sup> inspection; all was repaired except the door, and the tenants did their best.

The tenant also testified that the first time the landlord served the 1 Month Notice to End Tenancy for Cause, there was only one reason cited on the 2<sup>nd</sup> page. When the landlord provided the tenant with a copy later, there were 2 reasons.

#### Closing Submissions of the Landlord:

The landlord denies telling the tenant on April 22, 2016 during the second inspection that the place looked good, and stated that she made no comments whatsoever. She called the tenant the next day saying that the repairs were not made as expected. The landlord also submits that on April 22 she told the tenant that the door wasn't repaired well enough, but suggested a temporary fix. The landlord called the tenant on April 23 to ensure there was no question that the landlord wanted the property back.

The landlord agrees that some wear and tear is expected, and the rental unit is about 30 years old or more.

#### Closing Submissions of the Tenants' Legal Advocate:

The tenants' Legal Advocate submits that from the descriptions heard from the landlord, there is no extraordinary damage. The landlord could have taken photographs but didn't, and the tenant testified that the repairs were made to the best of their ability.

With respect to more time required to dispute the notice to end the tenancy, the tenants' Legal Advocate submits that the first notice was given on April 22, 2016 but the tenants believed the landlord was satisfied with the repairs and they threw away the notice, so didn't have it to read the instructions with respect to disputing it. The tenant made a call to Inquiry BC and contacted the Legal Advocate on May 8, but it took until the 9<sup>th</sup> of May to get an appointment. The application for dispute resolution was filed on May 10. The

tenants seek more time due to the delay in getting the second copy from the landlord, which had been altered.

### Analysis

Firstly, with respect to the tenants' application for more time than prescribed to dispute a notice to end a tenancy, the *Residential Tenancy Act* states that once a tenant is served, the tenant has 10 days to dispute the notice by filing an application for dispute resolution. If the tenant fails to do so, the tenant is conclusively presumed to have accepted the end of the tenancy. In order to determine the date by which the application must be filed, I must determine when the notice to end the tenancy was served. In this case, the parties agree that the landlord served the notice on April 15, 2016. The copy that was provided for this hearing by the tenant is the disputed notice, which I find is the altered copy. The landlord testified that she gave the tenant that copy on May 7, 2016. The tenant filed the application for dispute resolution on May 10, 2016, which I find is within the time prescribed, and no further time is required.

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was issued in accordance with the *Residential Tenancy Act*, which can include the reasons for issuing it. I have reviewed the 1 Month Notice to End Tenancy for Cause and I find that it is in the approved form and contains information required by the *Act*. The reasons for issuing it are in dispute.

In this case, the landlord gave the tenants a second chance by issuing a notice to end the tenancy then agreeing to another inspection to allow the tenants time to repair the damages. The landlord testified that the repair to the door was not done to the landlord's satisfaction, and the tenant testified that the tenants did their best. The landlord has not provided any photographs or a copy of the move-in condition inspection report, and the Legal Advocate for the tenants submits that the damage is not extraordinary. Given that a tenant is required to leave a rental unit undamaged at the end of a tenancy and during a tenancy is required to make repairs of damage that is caused by the actions or neglect of the tenant or a person permitted on the property by the tenant, a landlord must be able to establish that the damage is substantial and/or causing risk to the rental property. I cannot, in the circumstances and in the absence of photographs or other evidentiary material, find that the damage is extraordinary. Therefore, I cancel the 1 Month Notice to End Tenancy for Cause.

The landlord also testified that a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was also served on the tenants on May 2, 2016 and the landlord collected the rent that was the subject of that notice on May 7, 2016. Although the tenants' application does not refer to that notice, the landlord has provided a copy and raised it

during the course of the hearing. The *Residential Tenancy Act* states that once served with such a notice, the tenant must dispute it or pay the rent in full within 5 days. If the tenant pays the rent, the notice is of no effect, but if the tenant does neither the tenant is conclusively presumed to have accepted the end of the tenancy. The landlord testified that the tenant called on May 6, 2016 asking the landlord to collect the rent, and the landlord did so on the following day. Therefore I find that the rent was offered on the 4<sup>th</sup> day after service of the notice, and was collected on the 5<sup>th</sup> day, and the notice is of no effect.

### Conclusion

For the reasons set out above, the 1 Month Notice to End Tenancy for Cause dated April 15, 2016 is hereby cancelled and the tenancy continues.

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 10, 2016

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Residential Tenancy Branch