



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

CNC

### Introduction

This hearing dealt with an application by the tenant for an order setting aside a 1 Month Notice to End Tenancy for Cause. Both parties appeared and gave affirmed evidence. No issues regarding the exchange of evidence were raised.

### Issue(s) to be Decided

Is the 1 Month Notice to End Tenancy for Cause dated May 28, 2016 valid?

### Background and Evidence

This two year fixed term tenancy commenced April 1, 2015. The monthly rent of \$2100.00 is due on or before the first day of the month. Although neither party filed a copy of the tenancy agreement both testified that the applicant and her husband are both listed on the agreement as tenants.

The home is occupied by the applicant, her husband, her husband's brother, and her 18 and 23 year old sons. Both her husband and her brother-in-law receive a disability income. The tenant also used to receive a disability payment but she now works as a special needs caregiver.

The landlord testified that he knew that some of the residents of the unit were using medicinal marijuana and he had no difficulty with that.

The landlord testified that the home is located on a quiet cul-de-sac and he is in regular communication with the neighbours. The landlord testified in a glancing manner, saying that this information was not relevant to this application, that he had heard from the neighbours that there was a steady stream of traffic coming to and from the rental unit for very short visits as well as other information that would indicate that someone in the home was selling drugs.

The landlord testified that on April 9 or 10 he received a call from the tenant's husband who told the landlord that the home had been broken into and asked him to come over right away. The landlord did. When he got there the husband told him that just an hour or so earlier three or four masked men had broken into the home; knocked the brother-in-law to the floor and hit him with hockey sticks; went into the office off the tenants' bedroom and ransacked the office. The home

invaders took 1.5 pounds of marijuana, \$5000.00 to \$7000.00 in cash, a machete, a knife and an air rifle. No other room in the house was disturbed.

By the time the landlord attended at the house the police had still not been called. As it turned out the purpose of his visit was that the husband wanted the landlord's permission to attach a floor safe to the office floor. The landlord denied the request.

The husband told the landlord he was through with selling marijuana; from now on he was only going to use marijuana personally. The husband also told the landlord he had to go out and buy a new set of scales.

The landlord testified that he also spoke to the tenant on this day. She told him the selling would stop immediately.

The landlord told the tenant he was in financial difficulty and he wanted to sell the house. He told her there were three options: he would sell the house and they would continue their tenancy with a new landlord; they would buy the house; or they would agree to a mutual end of tenancy.

The landlord testified that over the next few weeks the tenant made a real effort to purchase the home but was not able to secure the necessary financing.

Meanwhile the neighbours reported a marked decrease in traffic to and from the rental unit. From the landlord's observations it appears that the husband is now conducting his business away from the rental unit.

Sometime in mid-May there was a second incident at the rental unit. The brother-in-law heard and noise and called the husband, who called the police. The SWAT team attended at the unit in full gear. It turned out to be a false alarm; one of the pets had knocked something over. The neighbours and the landlord were very upset to have the SWAT team in the cul-de-sac.

On May 28 the landlord issued and served the tenants with a 1 Month Notice to End Tenancy for Cause. The reasons stated on the notice were that the tenant has engaged in illegal activity that has, or is likely to, damage the landlord's property and/or adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The landlord testified that he needs to sell this house to solve his financial situation and that the house he lives in is for sale. He also stated that he is tired of hearing about this situation.

The tenant testified that her husband has a prescription for marijuana; he only has the legal amount; and she does not know what that amount is.

She testified that:

- She was not home at the time of the home invasion.

- She does not recall that conversation with the landlord.
- She thinks the incident was reported to the police.
- She is not aware of the outcome of the police investigation.
- She did not know that there were thousands of dollars or a machete in the house.
- She did not know if anyone in the home was selling marijuana and denied any illegal activity was taking place in the rental unit.

She testified that the cash belonged to one of her sons; she was not sure which. Her 18 year old son is not working or going to school and her 23 year old son works variable house as flooring installer. She was not sure how either son would have accumulated this sum of money.

Finally, the tenant said that neither her husband nor brother-in-law participated in the hearing or testified because they did not want any further contact with the landlord.

The landlord responded by saying that he is still fixing things at the rental unit and the husband is talking to him when he is there.

#### Analysis

On an application such as this, the burden of proof is on the landlord to establish, on a balance of probabilities, the grounds stated on the notice to end tenancy.

The *Residential Tenancy Policy Guidelines*, available on-line at the Residential Tenancy Branch web site, provide succinct summaries of the legislation and the common law applicable to residential tenancies in British Columbia. Those guidelines will be referenced in the course of this decision.

The relevant law is explained in *Residential Tenancy Policy Guideline 32: Illegal Activities*. The key points for an arbitrator to decide are whether the criminal activity is sufficiently serious to warrant ending the tenancy and whether the illegal activity has a significant connection to the rental unit. In considering the first point the arbitrator may look at the extent of the interference with the quiet enjoyment of other occupants, extent of damage to the landlord's property, and the jeopardy the activity could cause for the landlord or other occupants of the residential property, such as neighbours in other rental units located on the same property. The second point relates to the requirement that the criminal activity, and the risk created by that activity, must be connected to the rental unit. For example, the fact that a tenant assaulted a person in another community would probably not be grounds for ending a tenancy; assaulting the resident of a rental unit in the same complex would be.

The evidence provided by the landlord is consistent with the selling of drugs from the rental unit. Generally, this is grounds for ending a tenancy. If the landlord had attempted to end this tenancy before or immediately after the home invasion, he may have been successful. However, his own evidence is that since the home invasion the husband's criminal activities

appear to have moved from the rental unit to other locations. There is no longer any connection between the tenant's illegal activities and the rental unit.

As far as the attendance by the SWAT team goes, while it may indicate what the police think of the residents of this house, their connections and their activities; it does not establish a link between the tenants' current activities and the rental unit.

For these reasons I find that the landlord has not established the grounds stated on the 1Month Notice to End Tenancy for Cause on a balance of probabilities and I grant the tenant's application. The 1 Month Notice to End Tenancy for Cause dated May 28, 2016, is set aside and is of no force or effect. The tenancy continues until ended in accordance with the *Residential Tenancy Act*.

#### Conclusion

The tenant's application is granted. . The 1 Month Notice to End Tenancy for Cause dated May 28, 2016, is set aside and is of no force or effect. The tenancy continues until ended in accordance with the *Residential Tenancy Act*.

As the tenant did not pay a fee to file this application no further order is required.

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: July 21, 2016

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Residential Tenancy Branch