



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

OLC; O; CNC

### **Introduction**

This is the Tenant's Application for Dispute Resolution made September 28, 2016, seeking an Order that the Landlord comply with the Act, regulation or tenancy agreement and "other" orders. On October 6, 2016, the Tenant amended her Application to include an application to cancel a Notice to End Tenancy for Cause issued October 4, 2016 (the "Notice").

Both parties signed into the Hearing and gave affirmed testimony. The Hearing process was explained and the parties were asked if they had any questions.

The parties acknowledged receipt of each other's documentary and electronic evidence. The Landlord stated that initially he could not open the Tenant's CD, but was eventually able to do so. The Landlord testified that his computer crashed after he opened the CD and questioned whether there was a virus on the CD.

The Landlord testified that he was not aware that the Tenant had amended her Application, but stated that he wanted to deal with the Notice. Therefore, this Hearing continued with respect to the Tenant's amended Application.

On her Application, the Tenant seeks "other". When an applicant seeks "other" orders, the Application requires the applicant to "provide details in the 'Details of Dispute' box below". The Tenant's description of what she is seeking is not clear on her Application; however, the Landlord stated that he understood that the Tenant is seeking to keep a duplicate key to the rental unit and to provide it to another person.

**Issue(s) to be Decided**

- Should the Notice be cancelled?
- Is the Tenant entitled to give another person a copy of her key to the rental unit?

**Background and Evidence**

A copy of the tenancy agreement was provided in evidence. The Tenant moved into the rental unit on May 18, 2013. Monthly rent is \$690.00, due on the first day of each month; however, the Landlord stated that rent is paid in advance on the last day of each month. The Tenant paid a security deposit in the amount of \$345.00 on May 15, 2013.

The Tenant acknowledged receipt of the One Month Notice to End Tenancy on October 5, 2016. A copy of the Notice was provided in evidence, which is not signed by the Landlord. The Tenant stated that her copy of the Notice was signed by the Landlord.

The rental unit is a suite in the Landlord's house. The Landlord lives in the other suite, above the Tenant.

On the Notice, the Landlord provided the following reasons for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
- Tenant has caused extraordinary damage to the unit/site or property/park.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

**The Landlord gave the following testimony and submissions:**

The Landlord testified that the Tenant has made a copy of the key to the rental unit and provided it to her boyfriend, contrary to clause 31 of the tenancy agreement because the Landlord did not give written consent for the Tenant to provide a key to her boyfriend. On August 21, 2016, the Tenant's boyfriend used his key to enter the rental unit when the Tenant was not there, setting off the alarm and causing a disturbance to the Landlord and to neighbours.

The Tenant's boyfriend told the Landlord that he "forgot the code" to the alarm and that he was trying to deliver flowers to the Tenant. The Landlord stated that the Landlord

told the Tenant that he does not want her boyfriend at the rental unit unless the Tenant is there. He stated that he has also had problems with the Tenant's boyfriend parking in the driveway and that he had to have 3 discussions with the Tenant before her boyfriend stopped parking in the driveway.

The Landlord testified that on September 9, 2016, he gave the Tenant written notice that the Tenant must surrender the extra key to the Landlord, but that the Tenant has refused.

The Landlord testified that since the beginning of the tenancy, he has changed the air handler filter on the heat pump once a month, at the end of the month, when he picks up the rent cheque. The filter is located in the rental unit. He stated that on September 30, 2016, he went to the rental unit to change the filter, fix some moulding, and change the locks to the rental unit. The Landlord stated that he took a witness with him because he felt uncomfortable going alone.

The Landlord stated that he had given the Tenant notice that he would be accessing the rental unit on September 30, 2016, at 4:00 p.m., and why he was doing so. The Tenant was "upset and angry" when the Landlord came to change the locks and replace the filter. The Landlord testified that the Tenant pushed the Landlord's witness out of the rental unit, shouting at him to get out. The Tenant then called the police, who spoke to the parties and advised the Landlord and Tenant to seek advice from the Residential Tenancy Branch. The police helped the Landlord to reinstall the lock. The Landlord provided a letter from his witness in evidence.

The Landlord testified that the police accompanied him at the rental unit on November 1, 2016, to assist in changing the filter.

The Landlord testified that the Tenant has changed window coverings and erected paintings on the walls without the Landlord's consent, contrary to clause 14 of the rental agreement. The Landlord submitted that this is causing damage to the rental unit because of the holes made in the walls.

The Landlord testified that on November 8, 2015, the Tenant was arrested for "D.U.I." after colliding with another vehicle. The police called the Landlord to see if he would agree to take custody of the Tenant, who was still drunk. The Landlord declined. The Tenant left two phone messages, swearing at the Landlord. The Landlord provided a thumb drive which includes copies of texts and an audio file of the Tenant's phone messages.

The Landlord stated that on July 23, 2016, the Tenant was smoking marijuana at the rental property, contrary to the “no smoking” clause in the tenancy agreement. The Landlord provided a copy of a letter from a witness in evidence.

The Landlord stated that he is afraid to go to the rental unit alone because the Tenant has been falsely accusing him of trying to be “intimate” with her.

The Landlord submitted that communication has broken down between the parties. He stated that the Tenant’s breaches of the tenancy agreement, her conduct, and her “use of the rental unit” are all reasons for him wishing to end the tenancy.

The Tenant gave the following testimony and submissions:

The Tenant submitted that the Landlord has no grounds to end the tenancy.

The Tenant testified that she is disabled and has fallen “many times on the stairs and the floor”. She stated that “a year ago” she gave her boyfriend a key to the rental unit so that he could check on her wellbeing. The Tenant submitted that she has a legal right to make a copy of her key and give it to a friend for emergency purposes.

The Tenant stated that on August 21, 2016, she had an argument with her boyfriend and was out with a friend when her boyfriend had gone to her house to give her some flowers, tripping the alarm. The Tenant stated that the Landlord yelled at her and told her that her boyfriend was not allowed to visit her anymore at the rental unit.

The Tenant stated that she has not caused any damage to the rental unit. The Tenant submitted that she is very clean and takes excellent care of the rental unit. The Tenant testified that she has lived at the rental unit for 3 ½ years and that the Landlord has been in the rental unit once a month since the beginning of the tenancy to change the filter. The Tenant stated that the Landlord never mentioned any damages, or complained about her décor before issuing the Notice. The Tenant provided a CD of photographs of the rental unit.

The Tenant stated that the Landlord is “possessive and territorial” about the Tenant. She testified that he “dominates” and has to know if she is still with her boyfriend. The Tenant stated that the Landlord asks her “to have sex with him”. The Tenant stated that when she was sick in December of 2013, she told the Landlord and the Landlord called the ambulance. She stated that the Landlord was on the bed with her when the ambulance arrived and that the paramedic had to ask the Landlord to leave.

The Tenant submitted that the Landlord is jealous of her relationship with her boyfriend and is trying to break them up.

The Tenant acknowledged that the Landlord contacted her on September 27, 2016, “providing notice” that he would be changing the locks on September 30, 2016. She testified that she thought the Landlord would be bringing a locksmith with him and was surprised when he turned up with two men but no locksmith. The Tenant stated that the witness shoved her, causing her pain in her neck and shoulders. The Tenant testified that the Landlord shouted at her, saying, “I’m the boss. I own this place”. The Tenant provided a redacted copy of a police report in evidence.

The Tenant testified that since September 30, 2016, she is afraid that the Landlord will enter her suite without notice or permission. She alleges that the Landlord has been increasingly difficult to deal with since her boyfriend accidentally tripped the alarm.

The Tenant provided a copy of a letter dated October 1, 2016, from the Tenant to the Landlord.

The Landlord gave the following reply:

The Landlord testified that he called the ambulance in December, 2013, because he was concerned about the Tenant’s welfare. He was adamant that he did not have any ulterior motive for going to her suite to wait for the ambulance to arrive. The Landlord provided a recording of the 911 call he made on December 7, 2013 at 7:00 p.m., asking for an ambulance.

The Landlord stated that the Tenant’s allegation about inappropriate behaviour towards her is disturbing him greatly.

The Landlord reiterated that he did not say that the Tenant’s boyfriend could not visit the Tenant; only that he did not want the Tenant’s boyfriend at the rental unit when she was not there.

The Landlord stated that he did not tell the Tenant that he was bringing a locksmith with him to change the locks. He testified that he decided to do it himself because he was going to charge her for the cost and wanted to keep the cost down.

**Analysis**

When a tenant seeks to cancel a notice to end the tenancy, the onus is on the landlord to provide sufficient evidence, on the balance of probabilities, that the tenancy should end for the reason(s) provided on the notice.

The Tenant testified that the Landlord behaved inappropriately with her in 2013, when she was not feeling well and had phoned him asking for assistance. The Landlord's electronic evidence (the 911 call) contains the voices of the Landlord, the Tenant and the 911 dispatcher, who instructed the Landlord to go to the Tenant's suite to ensure her safety and to provide the dispatcher with more information. The Tenant stated that she felt faint. The 911 dispatcher also instructed the Landlord to help the Tenant to her bed, where she would not be in danger of falling, and to stay with her until the ambulance arrived. If the Landlord had made sexual advances towards the Tenant, the time to make those allegations would have been in 2013.

I find that the letter dated October 1, 2016, from the Tenant to the Landlord, is disturbing. On page 2 of the letter, the Tenant writes, in part:

- "In the three years and five months that I have resided at this address..... During those 3 years you have made overtures indicating that you are interested in moving our relationship to something decidedly more intimate than a standard landlord/tenant arrangement. I have always been very clear on that subject, leaving no doubt that I am not interested in pursuing a friendship or relationship with you....."
- "Since the day that [the Tenant's boyfriend] triggered the alarm, you have become increasingly contentious, demanding and difficult to reason with. The only reasonable explanation is because you are jealous of my relationship with him and are doing your best to discourage it or make my life difficult as a result."
- "..... I would like to understand why it is suddenly an issue. Again, I honestly believe you are acting out of jealousy."

I find that the Landlord provided sufficient evidence to end the tenancy with respect to the first reason listed on the Notice. I find insufficient evidence that the Landlord is behaving inappropriately or in a sexual manner towards the Tenant, and that her allegations are causing him unreasonable disturbance.

Having found that the Landlord has provided sufficient evidence with respect to the first reason to end the tenancy, I need not explore the other two reasons.

I dismiss the Tenant's application to cancel the Notice. The tenancy is ending and therefore I also dismiss her application for authorization to provide a key for the rental unit to her boyfriend.

Section 55(1) of the Act provides that 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 of the Act and (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the notice.

I find that the One Month Notice to End Tenancy complies with Section 52 of the Act and therefore, the Landlord is hereby provided with an Order of Possession. I find that the Notice is effective November 30, 2016.

### **Conclusion**

The Tenant's Application is **dismissed**.

The Landlord is hereby provided with an Order of Possession **effective 1:00 p.m., November 30, 2016**. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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: November 25, 2016

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Residential Tenancy Branch