



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC

### Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the one month Notice to End Tenancy dated October 27, 2016
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Notice to End Tenancy was personally served on the Tenant on October 27, 2016. Further I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing, by registered mail to where the landlord resides on November 2, 2016. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the Notice to End Tenancy dated October 27, 2016?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

### Background and Evidence

The tenancy began on June 1, 2001. The tenancy agreement provided that the tenant(s) would pay rent of \$550 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$275 prior to the start of the tenancy.

The rent has since been increased to \$757 per month payable in advance on the first day of each month.

Grounds for Termination:

The Notice to End Tenancy identifies the following as the ground to end the tenancy.

- 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

The landlord seeks to end the tenancy based on the following evidence:

- The rental unit is located on the second floor with the bottom floor containing commercial units. There are 6 residential rental units in the rental property.
- On October 17, 2016 the Vancouver Fire Department conducted an inspection of the apartment building and issued the landlord with a Notice of Violation requested that all stored items on the fire escape be removed. These items included those of the tenants.
- On October 20, 2016 the landlord and his agent conducted an inspection of the fire escape in the presence of the tenant and she was told that she would need to clear all of her items.
- The following day the tenant was given written notice that she would have to remove those belongings by October 24, 2016.
- On October 27, 2016 the landlord conducted another inspection and discovered that the items had not been removed.
- On October 27, 2016 the tenant was served with a one month Notice to End Tenancy.
- On November 2, 2016 the Vancouver Fire Department did a follow up inspection and the landlord was given a second Notice of Violation.
- On November 23, 2016 the Vancouver Fire Department did a further follow up inspection and issued a Notice to Violation.
- The landlord is subject to a \$200 fine for every re-inspection until the violations have been corrected. The landlord has now been fined \$400. Part of the first violation was the landlord's failure to install a safe handrail.
- The Fire Department has contacted her seeking to re-inspect the property.

The tenant disputes the Notice based on the following:

- She is a long term tenant of 15 years. She has not had to remove belongings in the past.

- Part of the November violation was the landlord's failure to install a safe handrail.
- She questions the integrity of the process. She overheard the landlord suggesting to the Fire Department that a violation notice should be issued.
- Not all of the items referred to are the tenants.
- She testified this is the landlord's efforts to get rid of her so that he could re-rent it at higher rent.
- She has contacted the Fire Department to challenge the designation of the patio being an exclusive fire escape but she has been unable to contact with the inspector.
- She has been a model tenant for 15 years.
- She is presently in ill health and is not in a position to move.
- She is willing to comply with legal requirements but she has lost trust in the integrity of the landlord.
- She is prepared to move the belonging but would not be able to move the belongings until some time in January.

Analysis:

The landlord has the burden of proof to establish sufficient cause to end the tenancy based on a balance of probabilities. After carefully considering the evidence and the submissions of the parties I determined the landlord has established sufficient cause based on the following:

- I am satisfied the Vancouver Fire Department Notice of Violation dated October 17, 2016 Notice of Violation dated November 2, 2016 and Notice of Violation dated November 17, 2016 describes a situation that seriously jeopardizes the health and safety or other lawful right of the landlord or other occupant in the rental property. I determined the presence of the tenant's belongings has partially created this safety risk.
- The tenant failed to remove the belongings within a reasonable time after receiving written notice and continues to ignore the order of the Vancouver Fire Department to the date of the hearing as the belongings have not been removed..
- The tenant failed to provide a reasonable explanation as to why she continues to put the landlord and other tenants at risk.

Determination and Orders:

It is unfortunate that the tenant has failed to comply with the Notice of Violation. I recognize this is a long term tenancy. However, I determined that I have no alternative but to dismiss the tenant's application to cancel the Notice to End Tenancy. I am satisfied the landlord has establish sufficient cause to end the tenancy. I order that the tenancy shall end. I further order that the application of the tenant for the cost of the filing fee be dismissed.

Order for Possession:

The Residential Tenancy Act provides that where an arbitrator has dismissed a tenant's application to cancel a Notice to End Tenancy, the arbitrator must grant an Order for Possession. As a result I granted the landlord an Order for Possession. The landlord stated at the hearing that if she was successful she was content for the Order for Possession to be set for January 31, 2017. As a result I set the effective date of the Order for Possession for January 31, 2017.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

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: December 20, 2016

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Residential Tenancy Branch