



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PENTICTON APARTMENTS LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, ERP, RP, RR, FF

### Introduction

This hearing was convened by way of conference call in response to the tenant's application for an Order to cancel a One Month Notice to End Tenancy for Cause; for an Order for the landlord to make emergency repairs for health or safety reasons, for an Order for the landlord to make repairs to the unit, site or property, for an Order for the tenant to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlord for the cost of this application.

The tenant and agent's for the landlord attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions under oath. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. 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 Issues

RTB Rules of Procedure 2.3 states that "if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply." In this regard I find that not all the claims on the tenant's application are sufficiently related

to the main issue to be dealt with together. I therefore will deal with the tenant's application to cancel the One Month Notice to End Tenancy for Cause.

Issue(s) to be Decided

Is the tenant entitled to an Order to cancel the One Month Notice to End Tenancy for Cause?

Background and Evidence

The parties agreed that this month to month tenancy started on January 01, 2010. Rent for this unit is currently \$714.00 per month due on the 1<sup>st</sup> of each month.

The landlord's agent BL provided testimony on behalf of both of the landlord's agents. BL testified that the tenant was served with a One Month Notice to End Tenancy for Cause (the Notice) on September 30, 2016. A copy of the Notice has been provided in evidence by the tenant. The Notice has an effective date of October 31, 2016 and provides the following reason to end the tenancy:

- 1) *The tenant or a person permitted on the residential property by the tenant has*
  - (i) *Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*
  - (ii) *Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or*
  - (iii) *Put the landlord's property at significant risk;*

BL testified that the landlord has received numerous written and verbal complains about the tenant. These complaints contain issues such as the tenant listening outside other tenants' apartment doors and windows; interaction between other female tenants and this tenant make the female tenants feel uncomfortable and unsafe; the tenant owns a number of vehicles which he parks in the street closest to the building which leaves no

space for other tenants or their guests; accusing other tenant's dogs of allowing them to defecate in the hallway and he leaving a cup of dog feces outside that tenant's door; causing damage to a tenant's car; hoarding items which are inflammable; staining the new hallway carpet; making loud noise; other tenants are worried about a fire being caused in this tenant's unit; having his cars parked full of garbage; bringing garbage into the unit early in the morning causing disturbances with his shopping cart; and using the washing machines in the common laundry room to wash or dry his bug infected belongings.

BL testified that they have had problems with the tenant hoarding belongings in his unit including car batteries and other inflammable items. Belongings are piled up in the unit and against heaters and there is little room to move in his unit which is a fire hazard. Since 2012 the fire department have been called out to the tenant's unit to inspect it and they made certain recommendations for the tenant to clear his clutter in his unit due to the fire risk. The tenant will comply but then later he starts bringing in more clutter. Since between January, and March 2016 the fire department have been out and made reports concerning the amount of belongings in the tenant's unit again. The tenant had made some progress to remove some items to storage lockers but has continued to bring other items into the unit. The fire safety officer informed the landlord that this was an illness but that if the tenant continued to clutter his unit then the landlord must take action to evict the tenant. The landlord referred to the reports from the fire safety officer, the photographs taken by the fire safety officer and the landlord's agent KL and an email from the fire safety officer who has been trying to work with the tenant.

BL testified that on one occasion they were informed of a kettle whistling continually in the tenant's unit. BL and the previous building manager, who is now a tenant in the building, went to investigate; they knocked on the door and there was no response. As they were fearful of what was occurring in the unit and if the tenant was hurt in the unit, they entered the unit and found a kettle was on the stove. The kettle had boiled dry, the element was red hot and the tenant had left the kettle boiling and was not in attendance.

Furthermore, there were inflammable items close by which could have caught fire. The landlord and other tenants were fearful that this could have caused a fire.

BL testified that in September, 2016 they were notified of a water leak in this tenants unit. KL entered the tenant's unit to see where the water was coming from as it was going into the unit below and he saw that the tenant's unit was back to being extremely cluttered again. BL referred to their photographic evidence showing the condition of the tenant's unit in September, 2016. BL testified that they followed through with the advice of the fire safety officer and have issued the tenant with the eviction Notice. BL testified that as the tenant has paid rent for use and occupancy until the end of December, 2016 the landlord is willing to allow the tenant to live in the unit until the end of January, 2017 as the tenant has a lot of belongings to remove. BL therefore requested an Order of Possession effective on January 31, 2017.

The tenant testified that there are a couple of tenants that complain about him because he refused to help one of these tenants when she asked the tenant to drag her down the hall to her unit when she had had an accident. The tenant testified that he does not store car batteries in his unit, but rather they are the batteries from his electric scooter which are sealed and safe to store inside. The tenant informed the fire safety officer of this and he said they were safe to store in the unit.

The tenant testified that he notified the landlord's agents in June 2016 that he had a leak in his unit and it was the long weekend in September, 2016 that KL came to the building and said there was water flooding into the downstairs unit. The roof was not fixed until the following Wednesday.

The tenant testified that he has been clearing the clutter in his unit and he was told he had to have a foot clearance around the stove which he has done. The tenant testified that he has done what he can to clear the unit and has put stuff in some storage lockers and has stopped bringing more stuff into his unit. The tenant testified that he realizes he does have a problem with hoarding stuff but he is trying to take care of this. The tenant

testified that the landlord's agents photograph's showing clutter in his suite is just showing the tenant's belongings piled up after he had to move them away from the flood water coming in. The tenant testified that he would have everything cleaned up by the end of the month and the landlord may come and inspect his unit then.

The tenant disputed that he has disturbed other tenants or tracked dirt in the hallway. The tenant testified that the dirt in the hallway is from the tenant in the unit opposite his who works in a soup kitchen and she brings her cart in and parks it outside the tenant's unit. She puts her stuff on the carpet. The landlords put beige carpets down in the hallway without any underlay. This is a high traffic area and it carries noise and gets very dirty.

The tenant testified that he does not listen outside other tenant's doorway or windows and has no interest in other tenants. The tenant agreed he has a number of cars parked in the street but that these are all licenced. The tenant disputed that he has hit any other cars parked except one when the parking lot lines had deteriorated. There was no damage caused to that ladies car and she said it was OK.

### Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows:

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove the tenancy should end for the reason(s) indicated on the Notice. Where more than one reason is indicated on the Notice the landlord need only prove one of the reasons. The burden of proof is based on the balance of probabilities, meaning the events as described by one party are more likely than not.

When considering a One Month Notice to End Tenancy for Cause the Landlord has the burden to provide sufficient evidence to establish the reasons for issuing the Notice. I have reviewed the documentary evidence before me and find I am satisfied that the

tenant has an issue with hoarding items in his unit. While I accept that the tenant has been attempting to deal with these issues by getting storage lockers, these immediate issues have been continuing since January, 2016 and appear to be beyond a level of which I or the landlord can be satisfied that the unit could be considered safe and not a fire hazard.

The landlord has provided sufficient evidence to show the fire safety officer's recommendations to evict the tenant and I am satisfied that the landlord has acted on these recommendations in order to protect the safety of other tenants and the building. Based on this alone I find the landlord has met the burden of proof regarding the issues indicated on the Notice to end tenancy that the tenant has seriously jeopardized the health, safety or lawful right of other occupants and the landlord and has potentially put the landlord's property at significant risk. I must therefore dismiss the tenant's application to cancel the One Month Notice to End Tenancy.

I refer the parties to s. 55(1) of the *Act* that states:

**55** (1) *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 [form and content of notice to end tenancy], and*

*(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

I find the landlord's Notice to End Tenancy does comply with s. 52 of the *Act* and the landlord requested that I uphold the Notice and issue an Order of Possession for the rental unit. The effective date of the Notice is October 31, 2016; and this date has since passed; however, the landlord requested that the effective date of the Order of Possession is January 31, 2017. As I have dismissed the tenant's application I therefore issue an Order of Possession to the landlord.

Conclusion

The tenant's application to cancel the One Month Notice to End Tenancy for Cause is dismissed without leave to reapply.

As the tenancy will end I therefore also dismiss the unheard portion of the tenant's application without leave to reapply.

The landlord has been issued an Order of Possession effective **on January 31, 2017** pursuant to s. 55(1)(b) of the *Act*. This Order must be served on the tenant. If the tenant remains in Possession of the rental unit and does not relinquish that possession to the landlord then the 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: December 05, 2016

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Residential Tenancy Branch