



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, O

### Introduction

This hearing dealt with the tenants' Application for Dispute Resolution (the "Application") under the Residential Tenancy Act (the "Act") for:

- an order to cancel the landlord's One Month Notice To End Tenancy for Cause (the "One Month Notice"); and
- an order for unspecified other relief.

The landlord's two agents, Landlord "C.G." and Landlord "S.O.", (collectively, the "Landlord") appeared at the teleconference hearing and gave affirmed testimony. Tenant "K.M." and Tenant "G.M.", (collectively the "Tenants") also appeared at the teleconference hearing and gave affirmed testimony. Tenant K.M. spoke on behalf of both tenants. During the hearing the landlord and tenants were given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

### Preliminary and Procedural Matters

The tenants did not specify other relief they were seeking besides cancellation of the One Month Notice. Accordingly, I dismiss the tenants' claim for unspecified other relief.

While the tenants complained about repairs not having been completed despite written requests, these issues were not related to the tenants' dispute of the One Month Notice. Accordingly, I do not address this evidence in my decision.

Similarly, while the landlord complained about the tenants not allowing access to do repairs to the bathroom, these issues were not related to the reasons set out in the landlord's One Month Notice. Accordingly, I do not address this evidence in my decision.

Issue(s) to be Decided

- Are the tenants entitled to cancellation of the landlord's One Month Notice?

Background and Evidence

The undisputed testimony established that pursuant to a written tenancy agreement, a one year fixed term tenancy started on August 1, 2002 ending on July 31, 2003, with an option to continue the tenancy on a month to month basis. The current rent is \$845.00 due on the first day of each month.

The landlord issued a One Month Notice dated November 18, 2016, with an effective move out date of December 31, 2016. The landlord sent a copy of the One Month Notice to the tenants by registered mail on November 18, 2016. The tenants testified that they received the registered mailing on November 22, 2016.

The landlord's reasons for wanting to end the tenancy set out in the One Month Notice are as follows:

The tenant or a person permitted on the property by the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord;
- seriously jeopardized the health or safety of lawful right of another occupant or the landlord; and
- put the landlord's property at significant risk.

Landlord C.G. testified that on June 13, 2016 she attended the unit with Landlord S.O. to complete the annual inspection at which time there was so much clutter that the landlord was unable to inspect most of the flooring, baseboards, windows and the deck. The landlord sent the tenants a letter dated June 21, 2016 setting out the concerns and notifying the tenants that monthly inspections will be performed to monitor health and safety issues. The landlord requested "a marked improvement...to remove excess items".

Landlord C.G. testified that on July 14, 2016 photos were taken of the tenants' unit during the inspection. The landlord saw little improvement. The landlord submitted copies of the photographs. The tenants were sent another letter dated July 26, 2016

setting out the landlord's concerns with respect to the clutter and the fire hazard it poses based upon public information distributed by the fire department. The landlord requested that the tenant remove a significant amount of excess items and explained the fire safety concerns. The landlord gave notice that the next inspection would be August 16, 2016.

Landlord C.G. testified that during the next inspection on August 16, 2016 she saw little improvement. The landlord took photographs of the tenants' unit on this date and submitted those photographs as evidence. The landlord sent another letter to the tenants dated August 17, 2016 setting out their concerns about the clutter and asking the tenants to remove excess items. The landlord gave notice that the next inspection would be the week of September 19th.

The Saanich Fire Department conducted an inspection of the unit on September 19, 2016. The landlord testified that the Fire Department had safety concerns, particularly in regards to the pathways and the bedroom area. The landlord sent a letter to the tenants dated November 14, 2016 setting out their concerns. The landlord scheduled the next inspection for November 17, 2016. The landlord submitted photographs taken of the unit during the inspection on November 17th, 2016.

The landlord relied upon a comparison of all the photographs taken on July 14, 2016, August 16, 2016 and November 17, 2016 to demonstrate that the tenant has still made little improvement.

The tenants submitted photographs they took of their unit on November 19th and 20th, 2016, after the last inspection. Tenant K.M. testified that her husband took time off work to help her. The tenants relied on their photographs to establish their progress to date and to argue that they have made significant improvements. Tenant K.M. testified that the bedroom was only half done. The tenants did not submit any photographs of the bedroom.

The tenants testified that they were unable to do more than they have done and that they are doing the best they can. Tenant K.M. testified that she cannot do any heavy lifting and that her husband works seven days a week returning home too late to help. The tenant testified that she had eye surgery on August 27, 2016 and that she was unable to do any physical activity for five weeks. Tenant K.M. submitted a letter from her vision doctor dated December 8, 2016 confirming the tenant's physical limitations. The tenant also testified that she broke her foot on November 22, 2016.

The landlord raised the fact that the tenant had not submitted photographs of all the rooms in the unit, including the bedroom. The landlord argued that the tenants' photographs still show areas that are not accessible and that these areas need to be accessible.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

I accept the landlord's testimony which is supported by the photographs and documentary evidence.

I find that there is sufficient evidence that the clutter in the tenants' unit is seriously jeopardizing the health or safety or lawful right of another occupant or the landlord; and putting the landlord's property at significant risk by the condition of their unit.

In making this finding, I have taken into consideration the condition of the unit as shown in the photographs that were submitted by the landlord and tenants. I have also taken into account the information from the fire department that the landlord included in their evidence. I find that the clutter in the tenants' unit poses fire and safety risks. For these reasons, I find that the tenants are jeopardizing the health and safety of the landlord and other occupants and putting the landlord's property at risk.

After receiving the first letter from the landlord dated June 21, 2016, I accept that the tenants' were faced with scheduling and medical challenges to explain the condition of the unit shown in the various photographs. However, I find that there was sufficient opportunity to address the problem notwithstanding.

While I accept that the tenants made significant progress within three or four days of the last inspection, there is still sufficient evidence to support a finding that more is required to address the fire and safety concerns. In making this finding, I have taken into consideration that the tenants acknowledged that there is more work to be done in the bedroom which is only half done. I have also taken into account the information from the fire department as to how clutter poses a fire hazard and the landlord's testimony that the clutter interferes with the landlord's ability to service areas. The tenant did not submit photographs of all the areas that were shown in the landlord's photographs.

Based upon the foregoing, I find that the tenants are not entitled to cancellation of the One Month Notice. Therefore, I dismiss the tenants' application.

When a tenant's application to dispute a landlord's notice to end a tenancy is dismissed, s.55 of the *Act* requires me to grant an order of possession if the landlord's notice to end a tenancy complies with section 52 of the *Act*.

Based on the above testimony and evidence, I find that the One Month Notice complies with section 52 of the *Act*. As a result, I find the landlord is entitled to an order of possession.

As the tenancy will be ending based upon the reasons set out above, I do not have to consider whether the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord.

### Conclusion

The tenants' application is dismissed and the One Month Notice is upheld.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: February 07, 2017

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Residential Tenancy Branch