



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      CNC, MT

### **Introduction**

This is the tenant's application pursuant to s. 47(4) of the *Residential Tenancy Act* (the "Act") for cancellation of the landlords' 1 Month Notice to End Tenancy for Cause dated November 25, 2016 with an effective date of December 31, 2016 (the "1 Month Notice"). The tenant has also applied for more time to apply to cancel the 1 Month Notice.

The tenant attended the hearing with an advocate and a witness. Both of the individual landlords also attended, along with their witness. At the outset of the hearing, the hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and had the opportunity to present their evidence orally and in written and documentary form, to make submissions, and to respond to the other party.

It was undisputed that the tenant was personally served with the 1 Month Notice on November 25, 2016 and that he applied to dispute the 1 Month Notice on December 14, 2016, outside of the 10 day time limit. Accordingly, the initial question before me is whether the tenant is entitled to an extension of time for filing his application.

The landlords confirmed receipt of the tenant's application to dispute the 1 Month Notice and the Notice of Hearing and supporting evidence within the applicable timelines. The landlords submitted evidence to the Residential Tenancy Branch ("RTB") and to the tenant late, on January 9 and 10, 2017. The landlords also delivered a letter from their insurer dated January 12, 2017 to the RTB and the tenant's advocate on January 16, 2017. The tenant's advocate argued that there had not been sufficient time to respond to the landlord's evidence.

At the outset of the hearing I advised the parties that the tenant's application for an extension of time would determine whether the cause alleged by the landlords was

relevant to the outcome. I further advised that although I was willing to hear submissions and evidence on whether there was cause to end the tenancy after the submissions on the tenant's initial application were made, they would only be necessary if I decided in favour of the tenant on the first application for an extension of time to file the tenant's application for dispute resolution.

Accordingly, the parties argued the question of cause, and the tenant's advocate also made submissions on whether the question of cause should be adjourned because of the landlords' late filing of evidence. I have not allowed the tenant's application for an adjournment to respond to the landlords' late filed evidence because this dispute must necessarily be decided against the tenant even without the landlords' late filed documentary evidence.

### **Issues to be Decided**

Is the tenant entitled to an extension of time for his application to dispute the 1 Month Notice?

If so, is the tenant entitled to an order cancelling the 1 Month Notice?

If not, is the landlord entitled to an order of possession?

### **Background and Evidence**

Neither party submitted a copy of the tenancy agreement in evidence. However, they agreed that the tenancy began August, 2013 and is a month to month tenancy. Monthly rent of \$375.00 is due on the 1<sup>st</sup> of the month. No security deposit was paid. The landlords confirmed that rent was paid for January although they have not yet deposited it.

As set out above, the tenant's application to dispute the 1 Month Notice was filed four days after the 10 day time limit set out in s. 47(4) of the Act. The tenant testified that he did not apply to dispute the 1 Month Notice earlier because he suffered two traumatic brain injuries in the 1990s and has permanent brain damage as a result. He stated that his brain injury has left him with cognitive difficulties such that he loses track of his train of thought. The tenant also testified that he was not able to secure an appointment with an advocate quickly enough to meet the 10 day timeline. He did not consider it was possible for him to dispute the 1 Month Notice without assistance.

The tenant confirmed that he knows how to read although he is dyslexic.

The landlords' 1 Month Notice states: "Tenant's premises are fire hazards, room is used for storage." The landlords called another tenant who lives in the same residence as a witness. He gave compelling testimony about these fire safety concerns.

The witness testified that the residence at issue is a 90 year old house made of "dry fir" and that there are four units in it. He further testified that the tenant keeps the building's central fire alarm in his rental room consistently disabled. He further said that there had been a mattress fire in the tenant's room in the summer of 2016, and that he and another tenant had become aware of it before this tenant, who was in his bathroom at the time, had become aware of it, precisely because the tenant keeps his fire alarm disabled. The witness further testified that he and another tenant had dragged the mattress outside and doused it with the hose, and that the fire left a hole in the mattress the size of a basketball.

In response to the questioning of the tenant's advocate, the witness said that the mattress fire was not reported to the fire department because it had been adequately dealt with. Also in response to the tenant's advocate, the landlords' witness said that the residence has other fire alarms in the common hallway, but that these did not go off during this incident.

The male landlord testified that he was not aware of the mattress fire until shortly before the 1 Month Notice was issued. He stated that the tenant resides in a small room, approximately 10 feet by 10 feet, and that it is cluttered. The landlords' witness testified that the tenant keeps models and flammable model paint in his room, that the room is cluttered, that there is a table in the middle of it, and not much room to move.

The female landlord, a retired nurse, suggested that the tenant might be better served in supervised housing.

The tenant in response admitted that he keeps the alarm disabled. He said this is because it chirps and bothers him, and that he raised this with the landlord once, who commented that it was probably out of batteries. The tenant has not attempted to replace or insert batteries.

The tenant also agreed that there had been a fire in his room. It was not from smoking but from a paper towel that caught on fire and floated over to his bed. He admitted that he may not have been paying adequate attention. Since then, he says, he has been very cautious about fire safety. However, he still keeps the main fire alarm disabled.

The tenant's advocate stated that there is a battery powered fire alarm next to the disabled fire alarm in the tenant's room. However, neither the tenant himself, nor the landlords' witness, described this second alarm as sounding in response to the mattress fire. The landlords themselves were not aware of this other alarm. In his submissions on an adjournment the tenant's advocate suggested that an adjournment would allow the tenant time to lead evidence of this other smoke detector in his room.

The landlords submitted that disconnecting one alarm in a system could disable all the other alarms on the system. The tenant's advocate suggested that this was not the case, and that if it were, it would be an illegal system.

## **Analysis**

### ***Application for extension of time***

Section 47(5) provides that a tenant who has not applied to dispute a notice within 10 days of receipt is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice. Section 66 of the Act allows me to extend a time limit established by the Act "only in exceptional circumstances."

The Residential Tenancy Branch's Policy Guideline # 36 states that "exceptional" means out of the ordinary. This tenant suffered two unfortunate brain injuries in the 1990s. I accept that the injuries have affected his ability to function efficiently. I further accept that he had difficulty securing an appointment with an advocate who could assist him to dispute the 1 Month Notice. I am satisfied that this particular tenant's circumstances are extraordinary and I allow his application for an extension of time.

### ***Cause***

The 1 Month Notice alleges that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord or seriously jeopardized the health or safety or lawful right of another occupant or the landlord and/or put the landlord's property at significant risk.

Based on the undisputed testimony set out above I conclude that the landlords have cause to end the tenancy. The tenant has admitted that he keeps the smoke detector that the landlords are aware of continuously disabled. He has further admitted that his cooking caused a fire in his unit. He has also admitted that, although he has been especially careful since that fire, he continues to keep the main smoke alarm disabled.

If there is another smoke detector in the room, the landlords are not aware of it and it is not a component of the system currently in use. The tenant did not mention that that secondary smoke detector sounded when there was a fire in his room, and the landlords' witness testified that there was no alarm sounding when the tenant's mattress caught on fire. Accordingly, I am not satisfied that this second alarm, if it exists, is functioning.

In response to a question from the tenant's advocate, the landlords' witness stated that other alarms in the shared residence did not sound in response to the mattress fire. This suggests that the landlords' concern that disabling one alarm may disable other may be valid.

Section 47(1)(d) allows a landlord to end a tenancy for cause if the tenant or a person permitted on the 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;

The burden of proof is on the landlord to establish on a balance of probabilities that one or more of these grounds exists. I find that the landlords have met their burden of proof under s. 47(1)(ii) and (iii) of the Act. By disabling the fire alarm system relied upon by the landlords, the tenant has both seriously jeopardized the safety of the other tenants in the building and put the landlord's property (the residence itself) at significant risk.

Section 55 of the Act states where a tenant's application to cancel a landlord's notice to end tenancy has been dismissed, and the notice to end tenancy has been upheld, a landlord is entitled to an order of possession. This is subject only to the requirement that the notice meets the criteria set out in s. 52 of the Act. The landlords' 1 Month Notice meets those requirements, and the landlords are therefore granted an order of possession.

### **Conclusion**

The tenant's application for an extension of time to dispute the 1 Month Notice is allowed.

The tenant's application to cancel the 1 Month Notice is dismissed and the landlords' 1 Month Notice is upheld.

The landlords are granted an order of possession by operation of s. 55(1) of the Act. As the tenant has paid rent for January, he is required to vacate the rental unit by the end of January, 2017, and I grant an order of possession to the landlord effective at 1:00 pm on January 31, 2017. Should the tenant or anyone on the premises fail to comply with this order, it may be filed and enforced as an order of the Supreme Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the Act. Pursuant to s. 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: January 24, 2017

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Residential Tenancy Branch