



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

matter regarding PORT COQUITLAM SENIOR CITIZEN'S HOUSING SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC

### Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for cause.

The tenant and landlord's agent (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 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.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession based on the reasons given on the One Month Notice to End Tenancy for cause?

### Background and Evidence

The parties agreed that this tenancy started on April 01, 2011. The tenant currently pays a subsidized rent of \$315.22 per month. Rent is due on the first of each month.

The landlord testified that the tenant was served a One Month Notice to End Tenancy for cause (the Notice). This was served in person to the tenant on November 28, 2016. A proof of service document duly witnessed has been provided in documentary

evidence. A copy of the Notice has also been provided in documentary evidence and shows that the effective date of the Notice is December 31, 2016. The Notice provides the following reasons 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;
- 2) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has
  - (i) Damaged the landlords' property
  - (ii) Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
  - (iii) Jeopardized a lawful right or interest of another occupant or the landlord

The landlord testified that the tenant's unit has a substantial amount of clutter in it where the tenant brings in second hand items to sell from his unit. The unit is so cluttered it is a fire safety hazard and is unsanitary and unclean. The tenant has even been using his bathtub as a storage area. The landlord referred to his photographic evidence showing the amount of clutter in the tenant's unit.

The landlord testified that the tenant brought in some used clothing with bedbugs and was notified that a pest control company was coming to treat his unit. The tenant did not prepare his unit and due to the amount of clutter the pest control man informed the landlord that any treatment would not be successful. The landlord advised to do the treatment anyway. A second treatment was scheduled a few weeks later and again the pest control company advised the landlord that the tenant had not prepared his unit. The treatment was again carried out but the landlord was advised it was unlikely to be

successful. The landlord referred to the documents provided in evidence from the pest control company pertaining to this. The landlord testified that as the tenant will not prepare his room for bedbugs as directed they have been unable to get rid of the bedbugs.

The landlord testified that he has received a number of written complaints from other tenants regarding late night noise from this tenant or his guests; about the tenant moving furniture about in his unit; about people coming to the tenant's unit to buy items he is selling on Craigslist; about people throwing rock at the tenant's window; and about an altercation that took place outside the tenant's unit between the tenant and a women. The police had to be called for this incident and they had to break the tenant's door down.

The landlord testified that the tenant has breached a term of his tenancy agreement by operating a business from his unit by selling items he collects from his unit. The tenant has also breached his tenancy agreement by not obtaining tenant's insurance.

The landlord testified that the tenant has caused damage to the hallway carpet. There are 10 foot marks like burn marks leading to the tenant's front door which the landlord believes are likely caused by the tenant dragging furniture across the carpet. It is likely that the carpet will have to be replaced.

The landlord seeks an Order of Possession to be effective as soon as possible.

The tenant disputed the landlord's claims. The tenant testified that he did file an application to dispute the Notice on December 05, 2016 but had to make some amendments to his application. A hearing was scheduled for January 24, 2017 but the tenant testified that as he was still making amendments he did not appear at the hearing.

The tenant testified that he has now cleared out his bathroom. When he first met the landlord and his wife he told them he was planning on moving out and was selling things on Craig's list. The landlord said to just keep it quiet. The tenant testified that he respects everyone and is a quiet tenant; however, he does have arthritis so does occasional drop things on the floor and the tenant below his unit has complained about this.

The tenant testified that with regard to people throwing rocks, his buzzer did not work so when friends came to visit he asked them to throw rocks at his window so he could let them in. The tenant testified that he did have someone arranged to pick stuff up from his unit. They did not come so he hired a girl to clean his unit and do dishes as the tenant had been involved in a traffic accident and could not do much around the unit. This girl used the money he paid her to buy alcohol. She got drunk in his unit and he had to throw her out. The tenant agreed he did 'flip' at what this girl was saying and the neighbours saw this in the hallway. The tenant testified that he later explained what had happened to his neighbours and they were understanding about it and the tenant cleaned up the hallway; however, the police came and broke down the tenant's door. There was no phone call from the police or the landlord before this action was taken and the door frame is still broken.

The tenant testified that he is ready to get rid of all the clutter in his unit. The Fire Chief has been to his unit and has said everything is fine at a certain level. The tenant testified that with regard to the bedbug issue; these did not come from clothing. The tenant picked up a used comforter from the place he goes to get food. The comforter looked clean but it had bedbugs in it. The tenant testified that he was knocked off his bike by a car on October 16, 2016 and was not able to clean up his room to prepare for the bedbug treatments.

The tenant testified that he does not know what the marks on the carpet are caused by.

The landlord testified that he was not served any hearing documents for a hearing to be held from a tenant's application on January 24, 2017.

### 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. 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 to End Tenancy.

After consideration of the above, I find there is sufficient evidence to prove the reasons listed on the One Month Notice issued on November 28, 2016. The landlord's evidence shows the tenant's unit is significantly cluttered and despite warnings this was not been addressed by the tenant. While I accept that it is possible the tenant has issues after his accident that may prevent him clearing clutter from his unit, the tenant still has the responsibility to ensure his unit is not a fire hazard and should have ensured he engaged someone to assist him with this clean up.

Further to this I find there is a strong likelihood that the tenant has been selling items from his unit, more than just his own personal belongings, but rather items he has brought into the unit with the express purpose of selling on.

I am satisfied from the evidence before me that the marks on the hallway carpet in the common area of the building do lead directly to the tenants unit. However, these marks occurred it is difficult to determine; however, I am satisfied that they were caused as a result of an action of the tenant or a person permitted in the building by the tenant and as a result this damage is a significant reason in ending the tenancy.

I am also satisfied that the tenant's actions in bringing in a comforter with bedbugs has caused this bedbug infestation in his unit which if not treated will likely spread to other units in the building. The tenant has the responsibility to prepare his unit for any bedbug treatment and failed to do so.

From the evidence presented I am satisfied that the tenant or his guest have caused at least one noise incident which disturbed other tenants. While this may or may not be an isolated incident but the fact remained that it did occur and it did cause a disturbance. The tenant is responsible for the actions of his guests in the building and clearly there was an altercation between the tenant and his guest.

If any of these issues raised by the landlord had occurred standing alone then it may or may not have resulted in the landlord serving the tenant with a Notice To End Tenancy for cause; in light of the fact that there have been several incidents that have resulted in this Notice being served I am not persuaded by the tenant's arguments that have been presented today as a reason to cancel the Notice.

I find therefore that the tenant's application to dispute the Notice is dismissed.

S. 55(1) of the *Act* provides that:

**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 issue an Order of Possession for the rental unit as soon as possible. The effective date of the One Month Notice is December 31, 2016; and this

date has since passed. As I have dismissed the tenant's application I therefore issue an Order of Possession to the landlord effective two days after service upon the tenant.

### Conclusion

The tenant's application is dismissed without leave to re-apply.

The landlord has been issued an Order of Possession effective **Two (2) days** after service upon the tenant 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: February 01, 2017

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Residential Tenancy Branch