



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding South Okanagan Brain Injury Society  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes

CNC

### Introduction

This is an application brought by the tenant(s) requesting an order canceling a Notice to End Tenancy that was given for cause.

Some documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties and the witness the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties and the witness.

All testimony was taken under affirmation.

### Issue(s) to be Decided

The issue is whether or not to cancel or uphold a Notice to End Tenancy that was given for cause.

### Background and Evidence

The parties agree that on January 25, 2017 the landlord served the tenant with a one-month Notice to End Tenancy stating the following reasons:

- tenant or 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 or lawful right of another occupant or the landlord
- tenant or person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
  - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant
  - jeopardized a lawful right or interest of another occupant or the landlord.

The landlord testified that the Notice to End Tenancy has been given because of many complaints they received about the actions of the tenant's son.

The landlord further testified that the tenant has been given three warning letters, one on February 26, 2016, the second on March 9, 2016, and the third in December of 2016.

The warning letters were given because of numerous complaints about the tenant's son stealing items from other units, and because of the tenants sons threatening behavior.

The landlord further testified that the tenant was informed that the third warning letter would be a final warning and if they got any further complaints they would proceed with a Notice to End Tenancy.

The landlord further testified that on January 14, 2017 they got a written complaint from another tenant with regards to an allegation of break and enter and theft out of their unit by the tenants son.

The landlord further testified that the tenant's son has subsequently been charged with theft, however as yet those charges have not been proven in court.

The landlords witness testified that, on January 14, 2017, while they were sleeping, the tenant's son broke into her house and stole numerous items including a cell phone, Whiskey, cigarettes, and lighters as well as a wallet and money.

The landlords witness further testified that, when they discovered the theft, they called the RCMP at 6 AM and the RCMP were able to trace footsteps through the snow from her unit, to the respondent's home.

The landlords witness further testified that although her phone was recovered, everything had been erased off of it however her phone had been signed in to the applicants Wi-Fi, further evidence that was the tenants son that broken to her rental unit.

Landlords witness further testified that this break-in has had a very negative impact on her as she is now very frightened and paranoid, and is even afraid to allow her son to go outside. She further stated that she has to have the doors locked at all times, and at one point, when she saw the tenants son on the rental property, she had an actual breakdown and couldn't stop crying or shaking for quite some time.

The landlords witness further testified that although the tenant's son is not supposed to be within 5 m of her home, she has seen him stealing cigarettes and ashtrays and therefore he is not obeying the restriction.

The tenant testified that she does not dispute the allegations against her son and admits that he does have an upcoming court date however she stated that these problems occurred because he has severe ADHD and he had gone off his medications.

Tenant further testified that because of the upcoming court case her son is now motivated to change his behavior and to stay on his medication, and, as a result, she does not believe he presently poses any danger to others.

The advocate for the tenant proposed to the landlord that they enter into a four-month fixed term tenancy agreement as a trial period, and if the problems continued the tenants would be required to vacate at the end of that four-month fixed term.

In response to the advocate's proposal the landlord stated that they are not willing to allow a further four-month fixed term because, as shown in the witnesses testimony, the tenants son is

still acting out and, they feel this would be too stressful for the other occupants to allow this tenancy to continue any further.

### Analysis

It is my finding that the landlord has shown that the tenant's son has significantly interfered with, and unreasonably disturbed the other occupants of this rental property.

It is also my finding that the landlord has shown, on the balance of probabilities, that the tenants son has engaged in illegal activity, which adversely affected the security and safety of another occupant.

The tenant has argued that, although her son has been charged, the allegations have not been proven in court; however, since this is not a criminal matter, the burden of proof is not as high, and the landlord must simply prove their allegations based on "the balance of probabilities".

I accept that it is more likely than not that the tenants son was involved in a break and enter and theft from another occupant of the rental property, and it is my decision that these actions are significant enough to end this tenancy.

The tenant has also argued that her son is now on his medications and is therefore attempting to change his behavior, however the witnesses testified that the tenants son is still taking things from her property. Further, there's no way of knowing whether the tenants son will continue to take his medications.

It is my decision therefore that I will not cancel the Notice to End Tenancy.

Section 55 of the Residential Tenancy Act 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.

In this case I have examined the Notice to End Tenancy and it is my finding that it does comply with section 52 of the Act.

### Conclusion

I therefore dismiss this application without leave to re-apply, and, having determined that the landlord's notice to end tenancy complies with section 52 of the Act, I have issued an Order of possession, pursuant to Section 55 of the Act, enforceable 2 days after service on the tenant.

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: March 07, 2017

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Residential Tenancy Branch