



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Meicor Property Management  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by three advocates for the tenant and two agents for the landlord.

At the outset of the hearing I noted that the tenant's evidence was submitted to the Residential Tenancy Branch the day before the hearing. The parties confirmed that the tenant's evidence was served to the landlord the day before the hearing. The landlord's agents confirmed that they have had an opportunity to review the evidence and are prepared to address in this hearing.

I note that Section 55 of the *Residential Tenancy Act (Act)* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

While the tenant's advocates have made submissions in regard to the current vacancy rates in their area and the tenant's ownership of a cat that might impact her ability to obtain new accommodation should this tenancy be ended, I advised the parties in the hearing that these are not considerations I can make in regard to the validity and enforceability of the subject notice to end tenancy.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel and disregard a 1 Month Notice to End Tenancy, pursuant to Section 47 of the *Act*.

If the tenant is unsuccessful in her Application, it must be decided if the landlord is entitled to an order of possession pursuant to Section 55 of the *Act*.

### Background and Evidence

The parties agreed the tenancy began on January 1, 2013 as a month to month tenancy for a current monthly rent of \$724.00 due on the 1<sup>st</sup> of each month with a security deposit of \$325.00 and a pet damage deposit of \$325.00 paid.

The landlord confirmed the residential property has a total of 46 units made up of 1 and 2 bedroom units.

The tenants submitted into evidence a copy of a 1 Month Notice to End Tenancy for Cause issued by the landlord on June 19, 2017 with an effective vacancy date of July 31, 2017 citing the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord and put the landlord's property at significant risk.

The landlord submitted that in December 2014 the tenant had placed a plastic kettle on her stove and turned on the wrong burner. At the time the fire department had been called and the building was evacuated.

Then in August 2015 the landlord was informed by the tenant that she had left something on the heating element which required a replacement of the element for which the tenant paid. At the time the landlord issued a cautionary letter to the tenant.

The tenant submitted a copy of the letter dated August 26, 2015 advising the tenant that her tenancy was at risk of termination should "you have another safety incident with your stove or any other safety incident, in your unit."

The landlord testified that on June 17, 2017 the fire department was called at 5:00 a.m. because the tenant had left something on the burner and fell asleep. The landlord submitted that despite the alarms going off in the building the fire department could not get a response from the tenant and they had to breakdown the unit door. The tenant was removed by ambulance and spent some time in hospital.

The tenant's advocates do not dispute the events had occurred as described by the landlord. However, they do submit that the landlord would not have known about the second issue had the tenant not self-reported the event and that in all cases there was not a fire just smoke as result of the tenant's actions.

The tenant has submitted a copy of a letter dated September 15, 2015 from the local Fire Chief that states since August 29, 2009 there had been 11 responses to the residential property by the fire department for vehicle fire; ambulance assists; alarms activated and a smoke report. The letter goes on to say that only response to the tenant's rental unit was December 8, 2014.

The tenant's advocates acknowledge the tenant has a brain injury and that she is accessing all resources and supports that she has available to her. They submit that while she does need assistance with managing her affairs she does not need assistance with daily living activities such as dressing or meal preparation.

The advocates testified that at the time of the last incident the tenant was undergoing a lot of stress related to issues with her son and she had not slept well in the days preceding the incident.

The advocates offered that the tenant would be willing to have the stove removed and use only her microwave oven for cooking if the landlord would allow the tenancy to continue. The landlord rejected this offer.

### Analysis

Section 47 of the *Act* states a landlord may end a tenancy by giving notice to end the tenancy if one the tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or put the landlord's property at significant risk.

I find the evidence and testimony submitted by both parties confirms that on at least 3 occasions the tenant used her stove in a manner that created a significant risk to the health and safety of not only the tenant herself but other occupants in the rental property and to the landlord's property.

I am satisfied that the landlord has provided the tenant sufficient opportunities to allow the tenancy to continue despite these risks and that the tenant was warned after the second event that her tenancy may end if there was another similar incident.

I find the landlord is obligated to the other occupants in the 46 unit property to ensure their safety and despite the position of the tenant's advocates that these incidents did not include any actual fire, I find, on a balance of probabilities, the potential for a fire in these circumstances is significant. Even if a fire did not result, clearly the tenant's own health was significantly affected from the last event when she was hospitalized. I note that smoke can cause significant health issues to occupants who may have other underlying health conditions.

For these reasons, I find the landlord has established that the jeopardy to the health and safety of the other occupants of the residential property and the risk to the landlord's property is sufficiently significant to end this tenancy. I find the landlord has cause to end the tenancy.

Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord; give the address of the rental unit; state the

effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

I find the 1 Month Notice to End Tenancy for Cause issued by the landlord on June 19, 2017 complies with the requirements set out in Section 52.

Section 55(1) of the *Act* states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the *Act*.

Based on the above, I find the landlord is entitled to end the tenancy in accordance with the June 19, 2017 Notice.

### Conclusion

I find the landlord is entitled to an order of possession effective **two days after service** on the tenant. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be 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: September 07, 2017

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Residential Tenancy Branch