



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding GULF ISLAND PIONEER VILLAGE SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”).

I note that Section 55 of the *Act* requires that when a tenant submits an Application 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 Section 52 of the *Act*.

The hearing was convened by telephone conference call and was attended by the Tenant and three agents for the Landlord, P.S., L.B., and D.C., (the “Agents”) all of whom attended at the appointed time, ready to proceed. All parties provided affirmed testimony and were given the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision.

### Preliminary Matters

At the outset of the hearing I advised the Tenant that a three page document had been received at the Residential Tenancy Branch (the “Branch”) from her, on September 20, 2017. I advised the Tenant that the document had been received late and inquired with the Agents as to whether they had received the document and had time to consider it prior to the hearing.

The Agents testified that they had not received the document from the Tenant and therefore they had not had the opportunity to consider it. I advised the Tenant that Rule 3.14 of the Rules of Procedure states that all evidence from the Applicant that is intended to be relied on in the hearing, must have been received by the Respondent and the Branch no later than 14 days before the hearing.

In any event, I advised the Tenant that as the Agents had not received the evidence or had time to consider it prior to the hearing, it would not be accepted for consideration. The Tenant objected to the exclusion of her evidence stating that it was unfair. I advised the Tenant that I would note her objection; however, the document would still be excluded from consideration. I advised the Tenant that they were welcome to present oral testimony regarding the contents of the documentation, which I would consider in the hearing, however, the Tenant testified that she did not have the document before them.

#### Issue(s) to be Decided

Is there a valid reason to cancel the 1 Month Notice under the *Act*?

If the Tenant is unsuccessful in seeking to cancel the One Month Notice, is the Landlord entitled to an order of possession pursuant to Section 55(1) of the *Act*?

#### Background and Evidence

The Agent D.C. testified that the month to month tenancy began on August 1, 2003, and that rent in the amount of \$325.00 is due on the first day of each month. The Tenant confirmed that these are the correct terms of the tenancy agreement.

The Agent testified that the residence where the Tenant resides is a small 1 bedroom unit intended for one person only. The Agent stated that the Tenant's unit forms part of a larger property which has a number of small duplexes for low-income seniors. The Agent testified that there have been a series of incidents involving the Tenant making offensive and inappropriate comments regarding another occupant of the residential property, which have resulted in complaints to members of the Society that runs the property from both the resident who is the subject of the inappropriate comments, and other residents of property. The Agent testified that the Tenant was warned about the inappropriate comments and behaviours on a number of occasions and that two warning letters were issued to the Tenant regarding this behaviour.

The Agent P.S. testified that the Tenant also caused extraordinary smoke damage to the rental unit when her clothing caught fire from a cigarette. P.S. testified that furniture belonging to the Tenant was replaced, the walls were washed, sealed and repainted, and a significant number of loads of laundry were done for the tenant due to the smoke damage.

Further to this, the Agent testified that the Tenant has allowed an unreasonable number of occupants into the unit. The Agent testified that the Tenant previously applied to have her spouse move into the unit, a request that was denied due to the space limitations of her unit and the impact of an additional Tenant on the property and facilities. Despite this denial, the Agent stated that the Tenant's partner and other guests still frequently attend or reside in the Tenants unit.

In the hearing the Agent also provided testimony that the Tenant significantly interfered with or unreasonably disturbed another occupant, however, the One Month Notice does not list this as one of the reasons for ending the tenancy.

The One Month Notice in the evidence before me, dated August 18, 2017, has an effective vacancy date of September 30, 2017, and indicates that it was served on the tenant by mail. In the hearing the Agent testified that the One Month Notice was sent to the Tenant by registered mail on August 18, 2017. The Landlord also provided a Proof of Service Notice to End Tenancy (the "Proof of Service") and a copy of a registered mail receipt, indicating that the One Month Notice was served in the manner described above. In the hearing, Tenant acknowledged receiving the One Month Notice on August 21, 2017.

The One Month Notice provides the following reasons for ending the tenancy:

- Tenant has allowed an unreasonable number of occupants in the unit/site; and
- Tenant or person permitted on the property by the tenant has:
  - Significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.

In addition to their testimony at the hearing, the Agents provided a significant amount of documentary evidence in support of their testimony including:

- Written submissions in support of the One Month Notice;
- Photographs of the property;

- A complaint letter from another resident of the residential property regarding the behaviour of the Tenant;
- Letters from other members of the Society regarding complaints received about the behaviour of the Tenant;
- Two warning letters to the Tenant regarding her behaviour dated September 8, 2016 and August 18, 2017 respectively;
- Documentation pertaining to the Tenant's request to move her partner into the residence; and
- Information about the property in general.

In the hearing the Tenant refuted the claim that they had caused extraordinary damage to the unit. They testified that although they had burned themselves smoking, they had not damaged the rental unit in any way. The Tenant stated that the smoke damage referred to by the Landlords was the result of regular smoking in the unit, which is permitted under her tenancy agreement. Further to this, the Tenant stated that the walls had not been maintained or painted by the Landlord since she moved into the unit in 2003, some seven years prior to the incident.

In the hearing the Tenant testified that her spouse and her friends do frequently attend the rental unit but do not live there. Further to this the Tenant testified that it was unjust for the Landlord to refuse to allow her spouse to move in as she lives in a 1 bedroom unit with sufficient space for him to reside there. The Tenant also pointed to the evidence submitted by the Agents regarding the residential property, in general, which states that the units are intended for single occupants or couples.

In the hearing the Tenant acknowledged making unkind statements to other people regarding another occupant of the property; however, she stated that she never said these things to him directly. Further to this the Tenant stated that she had complained to the Landlord about the other occupant constantly watching her from his unit, however, the Tenant did not submit any documentary evidence regarding the complaint.

### Analysis

Based on the testimony of all parties, the complaint received from another occupant of the residential property, the admission of the Tenant, the letters and statements from other members of the Society regarding complaints received about the Tenant's behaviour; and the warning letters sent to the Tenant, I find the Landlord has established sufficient cause, pursuant to Section 47 of the Act, to end the tenancy because the Tenant or a person permitted on the property by the tenant has

significantly interfered with or unreasonably disturbed another occupant or the landlord. As a result, the Tenant's Application to cancel the One Month Notice is dismissed and I therefore decline to grant the Tenant the recovery of the \$100.00 filing fee.

I also find that the One Month Notice issued by the Landlord complies with section 52 of the Act. Given the above, and pursuant to section 55 of the *Act*, the Landlord is entitled to an Order of Possession.

Although testimony was provided by both parties in the hearing regarding the other reasons for which the One Month Notice was issued, as I have already found above that the Tenancy is ended, I have not made any findings of fact or law in relation to these matters.

### Conclusion

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. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this 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: October 12, 2017

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Residential Tenancy Branch