



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding RANDALL NORTH REALTOR  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: CNC OPC MNSD MNDC

### **Introduction:**

Both parties attended the hearing and gave sworn testimony. I find that the One Month Notice to End a Residential Tenancy dated October 25, 2017 to be effective November 30, 2017 was served by posting it on the door. The parties confirmed they served their Applications for Dispute Resolution on each other by registered mail. The landlord was disputing that they did not get the complete package at first and the tenant said it was an administrative error of the Residential Tenancy Branch. When she called them, she received the complete package and served it. I find it was received November 18, 2017 so pursuant to my authority under section 71(2), I find it was sufficiently served for the purposes of this hearing.

The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order of Possession pursuant to section 47 for cause; and
- b) To recover the filing fee for this application.

The tenant applies

- a) to cancel a Notice to End the Tenancy for cause;
- b) to obtain orders to repair;
- c) to recover compensation for repairs; and
- d) To recover the filing fee for this application.

**Issues:** Is the landlord entitled to an Order of Possession and to recover the filing fee?

Or is the tenant entitled to any relief? Has the tenant proved on the balance of probabilities that repair is needed and the landlord has not done the necessary repairs? Have they proved they are entitled to compensation and the amount? Have they proved they are entitled to the refund of the security and pet damage deposits? Are they entitled to recover the filing fee?

**Background and Evidence:**

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. Both parties had a contentious history and were quite emotional. They were reminded to stay focussed on the facts. The undisputed evidence is that the tenancy began on August 1, 2017 with the son, B.H., signing the tenancy agreement. The rent is \$550 a month and a security deposit and pet damage deposit was paid, each in the amount of \$275 (total \$550 deposit). B.H. got a job in the city and moved out at the end of August allowing his mother and sister to reside in the unit. The landlord said that clause 13 of his tenancy agreement forbids any occupants other than those listed on the agreement. Only he is listed. The landlord requests an Order of Possession as soon as possible due to this material breach of the tenancy agreement that was not corrected in a reasonable time after written notice to do so. Two other causes were listed; the tenant is knowingly giving false information to prospective tenants and the tenant has assigned or sublet without consent. In evidence are several letters complaining of problems caused by the sister of B.H. living in the building. His mother notes she has mental health issues, not a drug problem.

B.H.'s mother, who represented him today, said he moved out because of bed bugs in the unit. The landlord denies the unit has bed bugs and provided a letter from the previous tenant who said he checked the unit regularly and it had no bed bugs.

The tenant said they first thought the problem was fleas but then realized it was bed bugs and wrote to the landlord by email in late August. The landlord said she told them to do the prep work and she would arrange for pest control. At that point, she said B.H. said he preferred to just use spray if they provided some. They provided two cans. The landlord said one other unit in the building is treated every 3 months as a precautionary method but she has had no other complaints of bedbugs since she took over management of the building two years ago. The tenant said her son was getting bitten so he packed and left in late August. The landlord contended there was no proof of bed bugs in the unit. The landlord has not arranged for any professionals to inspect or treat for bed bugs. The tenant said they seem to use the caretaker to spray and another tenant with a baby is having a problem too.

**Analysis:**

The Notice to End Tenancy is based on cause pursuant to section 47 of the Act. Section 47 lists the causes, any one of which if proved is sufficient cause to end the tenancy. I find the weight of the evidence is that the tenant, B.H., has breached a material term of the tenancy agreement, clause 13, by allowing his mother and sister to

reside there while he moved out. I therefore dismiss their application to cancel the Notice to End the Tenancy. Section 55(1) (a) provides that the arbitrator must grant an order of possession of the rental unit where an arbitrator has dismissed the tenant's application and has upheld the Notice. As a result I grant the landlord an Order for Possession. I find it is not necessary to comment on the validity of the other two causes listed. An Order of Possession is issued effective two days from service.

The landlord also said they had a monetary claim but I find insufficient evidence was provided as to monies owed and it was not listed orally in the hearing. I dismiss this portion of the landlord's claim and give them leave to reapply. I note they have the security deposit in trust.

The tenant also had a monetary claim and asks for an order to repair. She had done a lot of repair work on the unit. I find insufficient evidence that she had the landlord's written consent to do the work or was promised reimbursement for it. I find insufficient evidence that there are bed bugs in the unit or that the landlord has been negligent in not providing treatment. Neither party had had the unit inspected by a professional and each had letters contradicting each other concerning the presence of bed bugs. I dismiss this portion of her claim to order repair or reimbursement. I also dismiss her application for an order to repair or order professional bed bug treatment. I find insufficient evidence was provided that this is necessary. However, as discussed with the landlord in the hearing, it behoves a diligent landlord to have their building professionally inspected and treated if a bed bug infestation is suspected. The fact that one unit has to be treated every few months might be considered an indicator that treatment of the building might be necessary to prevent infestation of other units. Treatment may be expensive but it is the landlord's duty under sections 28 and 32 of the Act to protect the tenants' peaceful enjoyment by maintaining the building to comply with safety and health standards.

The tenant also requests the return of her security deposit and pet damage deposit and says that really is all she wants. However, I explained to her that her request is premature for she is still residing in the unit. Section 38 of the Act provides that a landlord must either return the deposit in full or file an application to claim against it within 15 days of the later of the tenant vacating and providing their forwarding address in writing. I dismiss this portion of her claim and give her leave to reapply for her deposits at the appropriate time pursuant to section 38 of the Act.

The landlord requested they be granted substituted service of the Order of Possession by email as the building has no postal service. The mother of B.H. who represented

him agreed it would be acceptable service for the landlord to email both B.H. and her with the copy of the Order of Possession.

**Conclusion:**

I grant the landlord an Order for Possession effective two days from service. I dismiss their application for a monetary order as I find insufficient evidence was provided as to money owed by the tenant.

**I HEREBY ORDER that the landlord may serve this Order on the tenant, B.H., and the occupant mother by email as satisfactory substituted service.** Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement. I find the landlord entitled to recover the filing fee.

**I HEREBY ORDER that the landlord may recover the filing fee by deducting \$100 from the tenant's security deposit.**

I dismiss the tenant's application without recovery of the filing fee due to lack of success. I give the tenant leave to reapply for the return of the deposits (less the \$100 fee awarded to the landlord) after they vacate the rental unit and provide their forwarding address in writing to the landlord.

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: December 06, 2017

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Residential Tenancy Branch