



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ET, CNC, FF

### Introduction

This hearing dealt with applications from both the landlords and the tenants under the *Residential Tenancy Act* ("the Act"). The tenant applied, pursuant to the Act, for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause pursuant to section 47. The landlord applied for an early end to this tenancy and an Order of Possession pursuant to section 56 as well as authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended this hearing: two tenants attended represented by an advocate and two landlords attended represented by an advocate/lawyer. Both parties confirmed receipt of the other party's materials for this hearing.

### Preliminary Matter

The landlord provided preliminary testimony regarding their application for an early end to this tenancy. The definitions and sections of the Act relating to an early end to tenancy were discussed between the parties. It was determined that, given the information provided by the landlords that their application for an early end to tenancy was not appropriate in the circumstances. The landlords withdrew their application and relied on section 55 of the Act that states if a tenant is unsuccessful on an application to cancel a Notice to End Tenancy, an Order of Possession should be granted to the landlords.

### Issue(s) to be Decided

Should the landlord's 1 Month Notice to End Tenancy be cancelled?  
Or is the landlord entitled to an Order of Possession?

### Background and Evidence

This tenancy began prior to 2001. Neither party was able to provide an exact date of the start of this tenancy. Neither party was able to submit a copy of a written tenancy

agreement. The parties both agreed that, during the time that the current landlords have owned the property, the tenant has resided in the rental unit paying a monthly rental amount of \$820.00 each month.

The landlord's representative testified that, at the end of April 2017, the landlords became aware of a bed bug infestation within the residential premises. The landlords submitted a pest control report that suggested that the tenant's unit was very unkempt and that the bed bug infestation could either have begun within the tenant's unit or, at least, was able to recur because of the tenant's failure to clean his unit and allow it to be sprayed to get rid of the bed bug infestation. The report submitted from the pest control company indicates that units above and below the tenant were infected and treated.

The landlord's representative testified that other units in the residential premises were treated on more than one occasion in August and September 2017. The landlord's representative testified that the pest control company reported being unable to get into the rental unit because of the amount of belongings and refuse within the tenant's rental unit. The landlords both testified that they had requested the tenant allow his unit to be sprayed for bed bugs. The landlords both testified that they had given written notice to the tenant to clean his unit, clear paths for safety within the unit and to allow the landlords to spray for bed bugs in his rental unit. This testimony by the landlords was largely uncontested by the tenant. The landlords testified that the tenant was generally not cooperative.

The landlord's representative testified that, after several attempts to access the tenant's unit and clean for bugs, the landlords issued a Notice to End Tenancy for Cause. The Notice was provided to the tenant on September 30, 2017 with an effective date of October 31, 2017. The Notice relied on the grounds that the tenant had "seriously jeopardized the health or safety or lawful right of another occupant or the landlord".

The landlords claimed that they spent several thousand dollars, documented by their pest control reports and invoices re-spraying some (but not all) units surrounding the tenant's unit to rid those units of bed bugs. The landlords testified that some of this cost they incurred came as a result of the tenant's failure to allow the landlords to spray for bugs within his rental unit.

The landlords also testified that the tenant has too many occupants residing in his rental unit, describing a 4 person family inside a 500 square foot apartment. The tenant's advocate provided guidelines for the area where the tenant and family reside to support the tenant's claim that the tenant is within the standard for space per person within the rental unit.

The tenant testified (with documentary proof and confirmation by the landlords) that he arranged to have his rental unit treated once for bed bugs in November 2017. The tenant's advocate argued that since the landlord has failed to send follow-up pest control service or attend the tenant's residence since prior to this treatment of his unit, the landlords are not aware that the unit has been cleaned sufficiently and that the tenants are willing to allow further spraying treatments to occur if needed. The landlords submitted that they had this information only shortly before the hearing of this matter and wished to proceed with their request for an Order of Possession.

### Analysis

I acknowledge, based on the sensitive information relayed by the tenant's advocate, that the tenant and family have faced some difficult personal circumstances recently. While this is not a reason to disregard the requests of the landlord, particularly in matters of a bed bug infestation, this information provided context to the tenant's attention on other pressing personal matters. The tenant's advocate stated that the tenant has now brought in supports to assist and has met the terms required by the landlords by having the unit treated.

The tenant's advocate also made arguments regarding the absurdity of the landlords' claim of an excess of occupants in the rental unit. I will not consider these submissions as I do not intend to make a finding regarding the number of occupants.

The landlord's representative submitted that the landlord does not have to provide the tenant with unlimited opportunity and time to improve the circumstances of the residence. I accept the evidence of the landlords that the tenant's unit was visited by the pest control company on 3 – 4 occasions in September 2017. I accept the landlord's testimony and documentary evidence to show that they issued a 1 Month Notice to End Tenancy on September 30, 2017. I accept the landlord's documentary evidence and testimony by the landlords that shows that the tenant was given ample opportunities and notices over the course of at least 2 months to take steps to clean and allow access to his rental unit. I find that the tenant was given sufficient opportunity in accordance with the Act and the provisions of the 1 Month Notice to make efforts to clean and be compliant with the landlords' requests. However, the tenant took steps in the middle of November 2017 (over a month after the issuance of the 1 Month Notice) to address the landlord's concerns.

When a tenant applies to cancel a Notice to End Tenancy, the burden shifts to the landlord to justify the Notice to End Tenancy and provide evidence to support the grounds upon which the Notice relies. In this case, the landlord relies mainly on the ground that the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord. I find that the landlords made several attempts to access the tenant's unit and clean for bugs prior to issuing a Notice to End Tenancy for Cause.

I find that the landlords and their representatives have provided sufficient evidence to show, on a balance of probabilities, that the tenant's inaction regarding cleaning the rental unit and allowing access to pest control services seriously jeopardized the health or safety and the right of the other occupants/residents of the premises to be free of bed bug infestation.

I issue an Order of Possession to the landlords effective as below.

#### Conclusion

The landlord's application is withdrawn in its entirety.

The tenant's application to cancel the 1 Month Notice to End Tenancy is dismissed.

Pursuant to section 55, the landlord is provided with a formal copy of an Order of Possession effective January 31, 2018. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: January 8, 2018

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Residential Tenancy Branch