



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

CNC

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held on January 25, 2018. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- cancellation of the Landlord's 1 Month Notice to End Tenancy for Cause pursuant to section 47 (the "Notice")

The Landlord's Agent (referred to as the "Landlord") appeared at the hearing along with a police officer (the "Officer"). The Tenant attended the hearing along with two occupants of the rental unit. The Tenant also had legal counsel present (referred to as J.J.)

All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties acknowledged receipt of each other's documentary evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's Notice cancelled?
  - If not, is the Landlord entitled to an Order of Possession?

### Background and Evidence

The Landlord issued the Notice for the following reasons:

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.
- put the landlord's property at significant risk.

Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:

- damage the landlord's property.

The Tenant acknowledged receipt of the Notice on October 31, 2017.

In the hearing, the Landlord pointed out that the tenancy agreement, provided into evidence, only lists one tenant. The Landlord explained that although there are other people living there as occupants, the tenancy agreement is with the one Tenant, for the whole house (upper and lower units).

The Landlord stated that he conducted an inspection of the property on October 25, 2017, and noticed many issues with the property. The Landlord took several photos at that time, also provided into evidence. The Landlord relied on the photos to show that the Tenant and occupants had:

- removed smoke detectors
- filled the rental unit with so many items it poses an egress hazard
- damaged cupboard doors
- removed the electrical panel cover posing a safety concern
- painted graffiti on an inside wall
- spilled paint all over one of the doors
- removed the Landlord's stove and laundry dryer without consent, and replaced it with their own
- left large garbage piles in the back yard (producing bylaw complaints)
- broke one of the exterior windows

The Landlord expressed that the removal of smoke alarms is highly risky and poses a threat to the house itself and to those who live there. The Landlord stated that the Tenant has let the house run down and does not respect the property. The Landlord stated that the Tenant has allowed over 8 people to "couch surf" and make a mess of the house. The Landlord stated that someone from the neighbouring condominium building has seen people from this rental unit dumping bagged garbage over the fence, and in the bags were used needles. There have also been complaints that the people living at the rental unit have dumped a couch in the neighbour's yard. The Tenant denies disposing of items in this manner.

The Landlord also stated that he has done several inspections in the last few months, and he noted that the exterior window is now replaced and they have cleaned up a bit, but it is still quite a mess.

A police officer attended the hearing to support the Landlord and provide some context about the nature of what he has observed, and the amount of police activity that has been affiliated with the rental unit over the last year. The Officer stated that there has been an abundance of criminal activity happening in and around this house for quite some time. The Officer stated that there were at least 52 calls to them in 2017 for issues at this house. The Officer referred to several "property crime" calls in October and November of 2017, regarding the rental unit. The Officer further stated that there have been known criminals who use the house as their residence and as a base to operate out of. Already in 2018, the Officer indicated that the police went to the residence on 19 separate occasions. The Officer further noted that there was a reported "break and enter", which they investigated, and after their investigation, one of the occupants, E.V., was arrested. There was also another individual believed to be an occupant who was arrested.

The Officer listed off numerous police file numbers over the last few months, and summarized how the cases were related to the residence. He indicated that there was a stolen scooter found in the driveway of the rental unit. He also cited reports where the rental unit was connected to armed robbery and drug crimes. The Officer further noted that they observed a known criminal (with an arrest warrant) walk into the residence. Subsequently, the police followed her and after trying to locate her in the house, they were asked to leave by one of the occupants. The Officer stated that the police remained outside, watching and waiting for this individual to come out. Eventually, the police saw her leave the residence, and an arrest was made.

The Officer believes this house is a base for criminal activity, and it poses a threat to the community.

The Tenant stated that all of the bylaw complaints are hearsay only and that most of the issues with respect to the messy yard, and the broken window have been corrected. One of the occupants stated in the hearing that he took the smoke alarms down because he was doing some painting. He stated that he took them down in mid-October 2017, and put them back up in mid to late December of 2017. The Tenant provided photos into evidence, one of which shows that the smoke alarms were put back up and of Jan 10, 2018. The Tenant also provided photos to show that the window has been fixed and the yard is cleaned up.

The Tenant's lawyer, J.J., stated that the Tenant has no knowledge of any garbage being thrown over the fence. She further stated that the Tenant and all of the occupants have no knowledge of any criminal activity, and pointed out that there haven't been any actual convictions with respect to anyone staying at the house. One of the occupants stated that they believe the police are unfairly targeting their house.

### Analysis

In the matter before me, the Landlord has the onus to prove that the reasons in the Notice are valid. I note in civil law matters such as these, the standard of proof is based on a balance of probabilities, not the criminal court standard of proof beyond a reasonable doubt.

The Landlord has issued the Notice under multiple grounds. However, I first turn to the following grounds:

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.
- put the landlord's property at significant risk.

I note the Landlord has multiple concerns with respect to the Tenant, and the occupants of the rental unit, and he has expressed that the house itself is at risk due to the criminal behaviour of some of the occupants. However, I first turn to the Landlord's concerns with respect to the Tenant's treatment of their property (house and appliances).

In making my determination on this matter, I note that one of the occupants of the rental unit admitted that he took down the smoke detectors in the middle of October 2017. He stated he was doing some painting and needed to remove them in order to paint properly. The occupant also stated that he put the smoke detectors back up sometime later on in December 2017. The Landlord expressed serious concern over this matter. Although I do not find it unreasonable to remove a smoke detector *temporarily* in order to paint adjacent surfaces, I find that the occupant's failure to replace the smoke detectors for multiple months is negligent and irresponsible and posed a significant health and safety risk to the multiple other people who were residing there. I also find it posed a significant risk to the house itself. Should a fire have occurred, it could have been detrimental to both life and property.

In removing the smoke alarms for an extended period of time, I find the occupant seriously jeopardized the health and safety of the other occupants and also put the landlord's property at significant risk. Based on these reasons, I find the Landlord had sufficient grounds to issue the Notice.

Having made this finding, it is not necessary to consider the remaining grounds indicated on the Notice. The Tenant's application to cancel the Notice is dismissed. The tenancy is ending.

Under section 55 of the *Act*, when a Tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the Notice complies with the requirements of form and content. The Landlord is entitled to an order of possession.

### Conclusion

The Tenant's application to cancel the 1-Month Notice to End Tenancy for Cause is dismissed.

The Landlord is granted an order of possession effective **January 31, at 1pm**, 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: January 30, 2018

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Residential Tenancy Branch