



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CASCADIA APT RENTALS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC CNC LRE FFT FFL

### Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* ("the Act"). The landlord applied for an Order of Possession for Cause pursuant to section 55 and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied under the Act for: cancellation of the landlord's 1 Month Notice to End Tenancy for Cause ("1 Month Notice") pursuant to section 46; order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Each party confirmed receipt of the other party's Application for Dispute Resolution package with Notice of this Hearing as well as evidentiary materials.

### Issue(s) to be Decided

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

Is the tenant entitled to an order that sets or suspends the landlord's access to the rental unit?

Is the tenant entitled to recover their filing fee for his application? Is the landlord entitled to recover the filing fee for their application?

### Background and Evidence

This tenancy began on July 1, 2014 with an original rental amount of \$1300.00 payable on the first of each month. The tenants both testified that the current rental amount is \$1420.00 payable on the first of each month. The landlord's representative ("the landlord") testified that the original rental amount was \$1300.00 per month. A written tenancy agreement was submitted for this hearing indicating a \$1300.00 rental amount however both parties agreed that the rent has been raised since the start of this tenancy. The landlord testified that the rental amount is now \$1570.00 payable each month while the tenant testified that the rental amount is now \$1420.00 payable each month. No other paperwork was submitted with respect to the rental amount. The landlord confirmed that the landlord continues to hold \$650.00 security deposit and a \$650.00 pet damage deposit paid by the tenant at the outset of the tenancy (June 2014).

The landlord submitted a copy of 3 black and white photographs. It was difficult to identify what the photographs were meant to illustrate. It appeared that two photographs were taken of the hallway to an apartment door while one photograph was of a small object, possibly an insect. The landlord's representative testified that the photographs were intended to show the dirty area around the tenant's door and the bugs that are inside the unit. The tenants submitted their own photographs that showed the inside of their rental unit clean and tidy as well as the entrance and a similar photograph to the landlord's photograph of the outside of the tenant's rental unit/the rental unit door.

The landlord's representative also testified that the tenants have been given several opportunities to rehabilitate the condition of their rental unit as well as address the other issues that have arisen during their tenancy. The landlord issued a 1 Month Notice to End Tenancy for Cause relying on the following grounds:

*Tenant or a person permitted on the property by the tenant has:*

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

*Tenant has engaged in illegal activity that has, or is likely to:*

- *damage the landlord's property...*

The landlord testified that they intended to call one witness however the witness could not be reached for the conference call, despite multiple attempts to contact her. The landlord was given an opportunity to apply to adjourn this matter and chose not to do so.

The landlord testified that the tenant collects cans all over the neighborhood and brings them into the rental unit to sort. She testified that the cans in the rental unit area creating an environment for roaches. She testified that there are roaches inside and around the tenant's rental unit. The landlord also testified that, beyond the effect on the residence by bring dirt, grime and attracting roaches, the tenant sorts her cans late at night and disturbs the other occupants of the residential premises. The landlord testified that the tenant has been warned that she must keep her can collection and sort it elsewhere, off of the premises.

The landlord testified that the tenant and her son also have visitors coming to the rental unit "day and night"; that the tenant does not agree to suite inspections. She testified that the last inspection was done on July 21, 2017 with 24 hours' notice to the tenant.

The tenant testified that she moved from a much larger home (3 bedroom house) to her current (apartment) rental unit. She testified that since her move, she has been regularly reducing the items in her home, actively sorting and getting rid of what she doesn't need or doesn't have space for. The tenant testified that she keeps her unit tidy and is aware of the danger of bugs or pests that can come into your unit if you don't keep it clean. She also testified that she collects bottles for income. She testified that she washes the bottles in her kitchen sink and takes the bottles to the recycle depot on the following morning, each day. She testified that she does not sort her bottles and cans at night but always in the daytime.

The tenant testified that, on one occasion, the landlord told her that she cannot store her items from her home within her rental unit to sort and dispose of but that she has to get a storage unit and keep her belongings off site. She testified that she did not think this was a reasonable request, that the landlord was being mean to her when she had simply put items for a donation pick-up.

The tenant also testified, with respect to her application to suspend the landlord's access to the rental unit. She testified that, without reason or sufficient notice, the landlord will often knock and enter her rental unit, on a "fishing expedition" looking to see the condition of her room. Sometimes, the landlord even takes photographs.

The tenant's son testified that he resides with his mother. He testified that the rental unit is not excessively cluttered. He testified that his mother does collect bottles but they are never in the suite for more than 12 hours because, after she brings them in late in the day, she takes them to the depot each morning for recycling "like clockwork".

The tenant's son also testified that the landlord insists on entering the rental unit an unreasonable amount of times, usually at least once every month or two. The tenant's son testified that the landlord calls himself and his mother "filthy" and "hoarders". He testified that he and his mother are generally clean and tidy, and take care of their rental unit. He also noted that there were roaches/bugs inside the rental unit immediately when they moved in.

The tenant submitted an array of 15 colour photographs that depicted a clean rental unit with clear pathways. Some surfaces in the home were somewhat cluttered with items but the clutter did not impede on movement throughout the rental unit.

### Analysis

Several disputes between the parties arose at this hearing. The parties were unable to agree on the current rental amount however, as this application does not address rent, it is not necessary to make a decision regarding the correct rental amount. I will note, for the parties that, *if a term of an agreement is in dispute, it is the writer (in this case the landlord) of an agreement that must take responsibility for a lack of clarity within an agreement.*

With respect to the tenants' application to cancel the landlord's notice to end tenancy and the landlord's application for an Order of Possession both before me in this hearing, the burden rests with the landlord to justify the notice and the end of tenancy based on the grounds relied upon. It is the landlord's obligation to show, on a balance of probabilities, why the tenancy should end. In the case of a 1 Month Notice to End Tenancy for Cause, the landlord must *prove* the elements relating to the grounds given on the notice.

The landlord issued a 1 Month Notice to End Tenancy for Cause relying on two grounds. First, the landlord indicated that the tenant was engaged in illegal activity that has, or is likely to damage the landlord's property. I find that the landlord has provided insufficient evidence to support this ground to end the tenancy. When a landlord relies on a ground related to illegal activity, the landlord has the burden of proving that the activity was illegal – an illegal activity might include a serious violation of federal, provincial or municipal law, whether or not it is an offence under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.

A landlord alleging illegal activity should be prepared to establish the illegality by providing to the arbitrator and to the other party a copy of the relevant rule or legislation in accordance with the Rules of Procedure. In this case, I find that the landlord presented insufficient documentary submissions to prove that the tenant is engaged in illegal activity. When asked at this hearing to describe the tenants' illegal activity, the landlord referred generally to by-laws in the area that would affect the tenant's collection of cans and bottles however she provided no by-law to consider or any other documentation to show that an illegal activity is occurring in the tenant's rental unit. Therefore, I dismiss the landlord's application with respect to this ground.

The landlord also relied, in their Notice to End Tenancy on the ground that the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk. The landlord relied on her testimony that the tenant has put the property at risk by collecting cans and bottles, causing an infestation of roaches as well as other damage to this can collecting and other general hoarding habits.

I find that the landlord also provided insufficient evidence to show that the tenants are **significantly** damaging or risking damage to the rental unit. I accept the testimony of both the tenant and her son who spoke candidly regarding the tenant's bottle and can collecting as a means of income. I note that the tenant acknowledged some excess of possessions in the rental unit after downsizing but provided sworn testimony that she continues to reduce clutter and excess in the unit. The tenant also provided photographs that showed the rental unit in a reasonably tidy condition. I was not provided with photographic evidence by either party that illustrated significant damage or decay to the residential premises. The tenant's photographs showed a rental unit where the balcony was relatively clear: there was more than sufficient space to walk in the hallways and other rooms of the home.

I find that the landlord provided insufficient evidence to justify their 1 Month Notice to End Tenancy for Cause. Based on this lack of sufficient evidence and my acceptance of the testimony and photographs submitted by the tenants, I dismiss the landlord's application for an Order of Possession and grant the tenants' application to cancel the landlord's 1 Month Notice.

Additionally, the tenant applied to restrict the landlord's access to the rental. Section 70 of the Act addresses the landlord's right to enter the rental unit,

**70** (1) The director, by order, may suspend or set conditions on a landlord's right to enter a rental unit under section 29 [*landlord's right to enter rental unit restricted*].

(2) If satisfied that a landlord is likely to enter a rental unit other than as authorized under section 29, the director, by order, may

- (a) authorize the tenant to change the locks, keys or other means that allow access to the rental unit, and
- (b) prohibit the landlord from replacing those locks or obtaining keys or by other means obtaining entry into the rental unit.

I am not satisfied that the landlord has attempted to enter the tenants' rental unit without authorization. The tenants' testimony is not satisfactory and does not provide sufficient evidence to prove that the landlord has access the rental unit without notice or authorization. Based on the description of the tenant's son, the landlord has entered the unit regularly: "every month or so".

In accordance with Residential Policy Guideline No. 7, a landlord may enter a rental unit, with proper notice, for a reasonable purpose which might include but is not limited to inspecting the premises for damage. As stated in the guideline, "a 'reasonable purpose' may lose its reasonableness if carried out too often." The parties should be aware that section 29 of the Act addresses a landlord's entry into a rental unit,

**29** (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
  - (i) the purpose for entering, which must be reasonable;
  - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees...

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

I find that the landlord has visited the rental unit in accordance with the provisions of the Act as well as with good practices for a landlord to ensure the good condition of their property as long as notices are provided in accordance with the Act and reasonable accommodations are made for the tenant's schedules.

As the tenants have been only partially successful in their application, I find that they are not entitled to recover their filing fee in these circumstances.

As the landlord has not been successful in their application, I find that the landlord is not entitled to recover their filing fee.

### Conclusion

I dismiss the landlord's application for an Order of Possession and grant the tenant's application to cancel the landlord's 1 Month Notice. The tenancy shall continue.

I dismiss the tenant's application for an order to set conditions for the landlord's access to the rental unit. I dismiss the tenant's application to recover their filing fee.

I dismiss the landlord's application to recover the filing fee.

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: February 8, 2018

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Residential Tenancy Branch