



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

Landlord's Application made April 13, 2018: OPC; FF

Tenant's Application made April 13, 2018: CNC; LRE; OLC; PSF; FF

### **Introduction**

This Hearing was scheduled to consider cross applications. The Landlord seeks an Order of Possession and to recover the cost of the filing fee from the Tenant.

The Tenant applied to cancel a Notice to End Tenancy for Unpaid Rent; however, he acknowledged that he did not receive such a notice. The Tenant stated that he wished to cancel a One Month Notice to End Tenancy for Cause that was issued on March 31, 2018. The Landlord acknowledged that she understood that he wished to cancel the Notice for Cause, and therefore I amended the Tenant's Application accordingly. The Tenant also seeks an Order setting conditions on or suspending the Landlord's right to access the rental unit; an Order that the Landlord provide services or facilities required by law; and to recover the cost of the filing fee from the Landlord.

The Tenant's Application indicates the wrong spelling of the Landlord's last name. The Tenant's Application was amended to reflect the correct spelling.

Both of the parties attended and gave affirmed testimony at the Hearing which took place by teleconference. The hearing process was explained and the parties were given an opportunity to ask questions about the process.

It was determined that the parties served each other with their Notice of Hearing documents. The Landlord provided late evidence to the Residential Tenancy Branch, which the Tenant did not receive. I did not consider the Landlord's late evidence, but invited her to give oral testimony with respect its contents.

### **Issue(s) to be Decided**

Is the Notice to End Tenancy for Cause issued March 31, 2018 (the "Notice") valid? Is the Tenant entitled to various Orders as requested?

## **Background and Evidence**

The Landlord served the Tenant with the Notice on March 31, 2018. The Notice gives the following reasons for ending the tenancy:

Check all boxes that apply to the reasons for terminating the tenancy or occupancy in the unit/suite.

<input checked="" type="checkbox"/>	Tenant or a person permitted on the property by the tenant has (check all boxes that apply):
<input checked="" type="checkbox"/>	significantly interfered with or unreasonably disturbed another occupant or the landlord.
<input type="checkbox"/>	seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
<input type="checkbox"/>	put the landlord's property at significant risk.
<input checked="" type="checkbox"/>	Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
<input type="checkbox"/>	damage the landlord's property.
<input checked="" type="checkbox"/>	adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.
<input checked="" type="checkbox"/>	jeopardize a lawful right or interest of another occupant or the landlord.

The Landlord acknowledged that she is not alleging that the Tenant has engaged in illegal activity, and therefore the only reason I am considering is that the Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonable disturbed another occupant or the landlord.

### **The Landlord gave the following testimony:**

The Landlord made an application by way of Direct Request in 2015 and was granted an Order of Possession for Unpaid Rent; however, the Landlord chose not to enforce the Order. The Tenant's lack of cleanliness was "a health issue", so the parties agreed that the Landlord could view the rental unit monthly, but the tenant later reneged on that agreement and would not allow inspections.

The rental unit is the basement suite of a house. Other tenants occupy the upper suite. There is one furnace which heats the whole house. The thermostat is located in the upstairs suite. The furnace is located in the basement, and there is an "on/off" switch for the furnace in the Tenant's suite.

The Landlord testified that the Tenant is "not nice to people" and that she has lost previous upstairs tenants because of his abusive behaviour. She stated that the Tenant drinks excessively and calls the other tenants' kids "crack heads" and swears at them. The Landlord stated that the Tenant keeps interfering with the furnace which heats the whole rental property by turning the on/off switch "off". She stated that there is a really bad odour coming from the rental unit which concerns and disturbs the other occupants.

The Landlord the following documents in evidence, which were provided to the Tenant within the timelines required and were therefore considered:

1. Copy of an e-mail from the current upstairs tenants dated March 31, 2017, complaining about the Tenant and advising that the Tenant had been flipping the on/off switch,

thereby turning off the heat to the house. The upstairs tenant also remarked that the Tenant had used foul language to the upstairs tenant and to their visitors.

2. Copy of an e-mail from the Landlord to the Tenant dated March 9, 2018, warning the Tenant to stop using profanities towards the upstairs tenants, their guests, and the Landlord, and to cease flipping the switch to the furnace. This e-mail indicates that “this letter is your final warning”.
3. Copy of an e-mail dated March 6, 2017, from a former upstairs tenant, complaining about the Tenant’s use of vulgar language towards him and his family, the Tenant’s drunken behaviour and a foul odor emanating through the vents from the rental unit.
4. Copy of a letter dated May 24, 2015, from a second former upstairs tenant complaining that the Tenant is rude and belligerent and screams obscenities at her and her guests.
5. Copy of a letter from the current upstairs tenant denying a complaint that the Tenant made about them having “parties 3 -4 nights a week until 4 a.m.”. The letter also confirms that the upstairs tenants work Monday to Friday and have a 2 year old son, which means that they are not having late parties.

The Tenant gave the following testimony:

The Tenant stated that “every winter there is no heat in the daytime and I think she [the landlord] pays him [the upstairs tenant] not to put the heat on. The Tenant acknowledged that he turned the furnace off. He said he did it because the upstairs tenant had agreed to leave the temperature at 22 degrees, but kept turning it off.

The Tenant testified that heat and cable is included in the tenancy agreement, but that the Landlord “made me buy a space heater for \$140.00”.

The Tenant acknowledged that two other upstairs tenants had left, but stated that it was “not because of me”.

**Analysis**

The Tenant provided no corroborating evidence that the rental unit was not properly heated.

The copies of letters from the current and previous upstairs tenants all refer to the Tenant’s vulgar language and drunken behaviour. One of the previous tenants also confirms that the Tenant’s behaviour towards her was a factor in her decision to end the tenancy.

I accept that the Landlord warned the Tenant that this behaviour would not be tolerated and that the behaviour continued.

I find that the Landlord has cause to end the tenancy and that the Notice is a valid notice to end the tenancy. I find that the effective date of the Notice is April 30, 2018.

The Landlord has been successful in her application and I find that she is entitled to recover the cost of the filing fee from the Tenant. Pursuant to the provisions of Section 72 of the Act, the Landlord may deduct \$100.00 from the security deposit. The remainder of the security deposit must be applied in accordance with the provisions of the Act.

The tenancy is ending and therefore the Tenant's Application is dismissed in its entirety.

### **Conclusion**

The Tenant's Application is dismissed without leave to reapply.

The Landlord is hereby provided with an Order of Possession effective 2 days after service on the Order upon the Tenant. This Order may be enforced in the Supreme Court of British Columbia.

The Landlord may deduct the cost of the \$100.00 filing fee from the security deposit.

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: May 15, 2018

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Residential Tenancy Branch