



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding EAST KOOTENAY REALTY LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      LA LRE OLC CNC MNDC PSF

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on April 27, 2018, as amended on May 1, June 4, and June 6, 2018 (the "Application"). The Tenant applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- an order authorizing the Tenant to change the locks to the rental unit;
- an order setting or suspending conditions on the Landlord's right to enter the rental unit;
- an order that the Landlord comply with the *Act*, regulations, and/or the tenancy agreement;
- an order cancelling a One Month Notice to End Tenancy for Cause, dated April 28, 2018 (the "One Month Notice");
- a monetary order for money owed or compensation for damage or loss; and
- an order that the Landlord provide services or facilities required by the tenancy agreement or law.

The Tenant attended the hearing in person. The Landlord was represented at the hearing by S.T., an agent. S.T. was accompanied by M.P., the current owner of the rental property and J.N., the previous owner of the rental property. All in attendance provided a solemn affirmation at the beginning of the hearing.

The Tenant testified that Landlord was served with the Application package and subsequent amendment at the Landlord's office. On behalf of the Landlord, S.T. acknowledged receipt. The Landlord submitted documentary evidence in response to the Application. According to S.T., this was served on the Tenant by leaving a copy attached to the door of the Tenant's rental unit. The Tenant acknowledged receipt of the Landlord's documentary evidence. No issues were raised with respect to service or receipt of the above documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents are sufficiently served for the purposes of the *Act*.

The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The parties were advised to refer me to any documentary evidence upon which they wished to rely. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

Residential Tenancy Branch Rule of Procedure 2.3 permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most important issue to address is whether or not the tenancy will continue. Accordingly, I find it appropriate to exercise my discretion to dismiss all but the Tenant's request for an order cancelling the One Month Notice. The Tenant has leave to reapply for the remainder of the relief sought at a later date.

### Issue to be Decided

Is the Tenant entitled to an order cancelling the One Month Notice?

### Background and Evidence

The parties confirmed the tenancy began on October 1, 2017. The rental property came furnished. Rent in the amount of \$1,800.00 per month is due on the first day of each month. The Tenant paid a security deposit in the amount of \$900.00, which the Landlord holds. A copy of the tenancy agreement was submitted with the Tenant's documentary evidence.

On behalf of the Landlord, S.T. testified that the One Month Notice was served on the Tenant by posting a copy to the door of the rental property on April 28, 2018. The Tenant acknowledged receipt of the One Month Notice on April 29, 2018. The One Month Notice was issued on the basis that the Tenant significantly interfered with or unreasonably disturbed the Landlord, and that the Tenant had breached a material term of the tenancy agreement.

As a brief background, J.N. listed the rental property for sale at the beginning of April 2018. The rental property was sold to M.P. on April 17, 2018. The closing date was May 30, 2018. S.T. testified that the Tenant's actions during the sale of the property made the sale difficult for her and for the real estate agent. Specifically, S.T. testified that J.N., the seller, wanted to recover some items of sentimental value from the rental property before the sale completed. However, S.T. testified the Tenant made this difficult by failing to cooperate with efforts to create an inventory of furnishings in the rental unit, or to provide adequate access to the rental unit. S.T. acknowledged that some, but not all, of J.N.'s belongings have been retrieved from the rental property.

On behalf of the Landlord, S.T. also testified that she and the realtor also had to offer compensation to ensure the sale completed despite the difficulties caused by the Tenant, which she characterized as unreasonable.

In support of the above, the Landlord submitted a written chronology of events by the real estate agent. The chronology indicates that on April 24, 2018, she attended the rental property to complete the inventory but that the Tenant obstructed her efforts to do so. It appears the Tenant disagreed with what items should be removed and which should remain. The chronology confirmed the Tenant signed off on the inventory list.

In reply, the Tenant testified the inventory list was completed on April 24, 2018. A copy of the signed and dated inventory list was included with the Tenant's documentary evidence. The Tenant also submitted a copy of an email from S.T., dated April 24, 2018, thanking the Tenant for providing the inventory list and advising of a date to "swap out" the furnishings to be removed.

The Tenant also testified that she received the One Month Notice after the rental property sold, suggesting that her actions could not have interfered with the sale.

### Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 47 of the *Act* permits a landlord to take steps to end a tenancy when the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, or has breached a material term of the tenancy agreement. These are the bases indicated on the One Month Notice. I find the One Month Notice was received by the Tenant on April 29, 2018, and that she disputed the notice on May 1, 2018, in accordance with section 47(4) of the *Act*.

I find there is insufficient evidence before me to conclude the One Month Notice should be upheld and that the tenancy should end. While I accept the Landlord's evidence that the Tenant was not cooperative and disagreed with which furnishings were to be removed by J.N. when the rental property sold, I find this did not significantly interfere with or unreasonably disturb the corporate Landlord, or the Landlord's agent, S.T. It also appears it did not interfere with the sale of the rental property, which was sold within weeks of being listed for sale. Rather, it appears that the Tenant, perhaps reluctantly, permitted the Landlord to obtain an inventory of furnishings, although she disagreed with which items ought to be removed.

Further, with respect to whether or not the Tenant breached a material term of the tenancy agreement, I was not referred to any particular term in the agreement that was breached.

In light of the above, I find that the One Month Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*. In addition, having been successful, I find the Tenant is entitled to recover the \$100.00 filing fee, which I order may be deducted from a future rent payment at the Tenant's discretion.

Conclusion

I order that the One Month Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

I order that the Tenant may deduct \$100.00 from a future rent payment at the Tenant's discretion.

The Tenant remains at liberty to reapply for the remainder of the relief sought at a later date. This is not an extension of any statutory deadline.

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: June 20, 2018

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Residential Tenancy Branch