



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes

CNC

### Introduction

This hearing dealt with the tenant's application pursuant to the Residential Tenancy *Act* (the *Act*) for:

- Cancellation of One Month Notice to End Tenancy for Cause ("One Month Notice") under Section 47 of the *Act*.

The tenant appeared with his representative CM ("the tenant"). The landlords appeared. Both parties were given a full opportunity to call witnesses, present affirmed evidence, make submissions and cross examine the other party.

The landlords acknowledged receipt of the Notice of Hearing and all evidentiary materials from the tenant. No issues of service were raised. Accordingly, I find the landlords were duly served pursuant to section 89 of the *Act*.

I note that section 55 of the *Act* requires that when a tenant applies for Dispute Resolution seeking to cancel a One Month Notice issued by a landlord, I must consider if the landlord is entitled to an Order of Possession if the Application is dismissed and the landlord has issued a One Month Notice in compliance with the *Act*.

### Issue(s) to be Decided

- Is the tenant entitled to a cancellation of the One Month Notice under Section 47 of the *Act*;
- If the tenant is not successful in cancelling the One Month Notice, are the landlords entitled to an Order of Possession under Section 55 of the *Act*.

### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective oral and documentary submissions are reproduced here.

The landlords sent the One Month Notice to the tenant's social worker on May 15, 2018. On May 15, 2018, the social worker delivered the One Month Notice to the tenant. The tenant acknowledges receipt of the One Month Notice sent to him by his local social worker on May 15, 2018. The tenant did not raise any issue with respect to service of the One Month Notice Pursuant to section 71(2)(b), I find the tenant was sufficiently served with the One Month Notice on May 15, 2018.

A copy of the One Month Notice was submitted in evidence which contains an effective vacancy date of June 30, 2018.

In the One Month Notice, the landlord selected the following as reasons for issuance of the One Month Notice (numbering added):

1. The tenant or a person permitted on the property by the tenant has
  - Significantly interfered with or unreasonably disturbed another occupant or the landlord.
  - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
  - Put the landlord's property at significant risk.
2. 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.
3. Tenant or a person permitted on this property by the tenant had caused extraordinary damage to the unit/site or property/park
4. Tenant has not done required repairs of damage to the unit/site

The tenant applied for dispute resolution on May 28, 2018.

The parties agree on the following facts:

- The parties entered into a month-to-month residential tenancy agreement for one unit in a fourplex starting October 15, 2017, for rent of \$900.00 a month payable on the first day of each month;
- At the beginning of the tenancy, the tenant provided a security deposit in the amount of \$450.00 which is still held by the landlord;
- The tenant continues to occupy the premises; and
- The tenant has early onset Alzheimer's.

The landlords testified as follows:

- Shortly after the tenancy started, the landlords expressed concern to the tenant's friends and family about his capacity to live alone and submitted as evidence copies of correspondence to this effect;
- For many months after he moved in, the tenant lived among stacked, unpacked boxes of his belongings, making the premises difficult to navigate for visitors and creating a potentially hazardous situation in the event of an emergency;
- The tenant frequently inadvertently overloaded the electrical system, blowing a fuse or tripping a circuit breaker, and could not reset the circuit or reliably ask for help because of his medical condition;
- The tenant is unable to use a toilet plunger because of his medical condition; and
- The landlords testified to many conversations with the tenant and his family expressing concern about his safety in living alone.

The landlords testified that on December 22, 2017, they were informed by an occupant of a unit adjacent to the tenant's, that feces were seeping through the adjacent wall. A plumber and restoration company were called by the landlords. The plumber's report, submitted as evidence, stated the tenant's toilet was clogged with one or two socks, and was overflowing. This overflow and backing up of sewage resulted in contamination of the tenant's bathroom and the bathroom in the adjacent unit.

The landlords learned the tenant's toilet had not worked for at least five days; during this time the tenant also had no electricity because of having overloaded the circuit again. The landlords' enquiries revealed the tenant had been using the toilet at the church across the street. As a result, the tenant spent five days over Christmas holidays, without electricity and without a functioning toilet.

During this five-day period, the tenant did not reach out for assistance nor did he notify the landlords.

The restoration company retained by the landlords conducted emergency repairs allowing the tenant and the affected adjacent occupant to remain in their respective premises. The landlords were eventually reimbursed by the tenant for the initial repair bill of \$1,724.96.

The landlords subsequently obtained an estimate for the cost of additional restoration for the damage caused by the toilet blockage in December 2017, for the tenant's unit and the adjacent unit. The landlords submitted a copy of the estimate which is 25-pages, including 9 itemized pages of labour and materials as well as many photographs. The estimate is \$5,277.53.

For the two affected units, the restoration estimate details the following repairs:

- replacing and painting drywall
- removing and replacing flooring and doors

- detaching and resetting fixtures (where possible) or replacing fixtures
- replacing, installing and painting baseboards
- electrical repairs
- plumbing
- demolition and removal

The landlords have requested the tenant pay this amount of \$5,277.53. The tenant claims the estimate reflects a reconstruction of the affected bathrooms, and does not reflect mere repair. The tenant has also informed the landlords he is unable to pay for the repairs.

The tenant's representative at the hearing agreed with the landlord's outline of the facts and the tenant's situation in December 2017. However, she nevertheless asserted the tenant could live alone because of increased support after the incident in December 2017. She expressed confidence in that his present medical and social network are sufficient to prevent any such future incident. No details were provided and no witnesses were called in support of this assertion.

During the hearing, the representative of the tenant stated the tenant had nowhere to go if he were required to leave the premises.

### Analysis

I find the One Month Notice complies with section 52 of the *Act*.

Section 47 of the *Act* provides that upon receipt of the One Month Notice, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

I find the tenant was served with the One Month Notice on May 15, 2018. The tenant filed an Application for Dispute Resolution on May 28, 2018, outside the ten-day period.

Section 47(5) states:

- (5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant
  - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
  - (b) must vacate the rental unit by that date.

Pursuant to section 47(5), the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice (June 30, 2018) and must vacate the rental unit by that date.

Further to the conclusive presumption in this section, I grant the landlord an Order of Possession effective two days after service upon the tenant.

Conclusion

The Tenant's application to cancel the One Month Notice is dismissed without leave to re-apply.

I grant an Order of Possession in favour of the landlord effective two days after service upon the Tenant.

This order is final and binding on the parties and may be enforced in the Supreme Court of British Columbia as an order of that court should the tenant fail to comply.

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: July 13, 2018

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Residential Tenancy Branch