



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            CNC, MT

### Introduction

On June 20, 2018, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting to cancel a 1-Month Notice to End Tenancy for Cause, dated May 31, 2018, (the “Notice”) for the rental unit, and to request more time to cancel the Notice. The matter was set for a participatory hearing via conference call.

The Landlord and Tenant attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

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.

### Preliminary Matters

The Tenant applied for more time to cancel the Notice after the dispute period on the Notice had passed. The Tenant testified, and I confirmed, that the Tenant attended to dispute the Notice at a Service BC office on June 8 and 11, 2018. Due to some administrative errors, the Tenant’s Application was not formalized until June 20, 2018. As a result of the Tenant’s efforts to apply within the dispute period in accordance with Section 47 of the Act, I authorized the Tenant’s Application for Dispute Resolution and proceeded with his request to cancel the Notice. The Landlord did not dispute this decision and the parties continued with the hearing.

### Issue to be Decided

Should the Notice be canceled and the tenancy continue in accordance with the Act?

### Background and Evidence

The Landlord and the Tenant agreed on the following terms of the Tenancy Agreement:

The 1-year, fixed-term tenancy began on August 1, 2015 and continued on as a month-to-month tenancy after one year. The monthly rent is \$1,000.00 and is due on the first of each month. The Landlord collected and still holds a security deposit and a pet damage deposit of \$497.50 each.

The Landlord testified that as a result of new management arrangements, inspections were scheduled for each of the rental units in the six-unit residential property. The Landlord attended to the Tenant's rental unit and the Tenant gave him access and provided consent for the Landlord to take pictures.

The Landlord observed that the rental unit had a strong odour and that with the clutter and refuse present, that it would be difficult to inspect the unit. The Landlord focused on the carpets in the unit and noted that there were large stains throughout the unit and that there appeared to be mold and mildew on the carpets. The Landlord pulled up the carpet on one of the corners in the unit and noted that the under pad and concrete slab were dry.

The Landlord submitted photos of the rental unit that showed the clutter throughout the unit and the significant stains on the carpets. He also provided a copy of the move-in inspection report and stated that, although the report noted some stains on the carpet, the stains that were currently there are significantly worse than when the Tenant moved in and furthermore, that the cost to clean and/or replace the carpets would likely be more than the Tenant's security deposit and pet damage deposits combined.

On the same day the Landlord attended the Tenant's rental unit and took the pictures, the Landlord asked the Tenant if he was willing to make his rental unit more presentable before the Asset Manager attended for the unit inspection and the Tenant refused. As the Tenant refused to address the condition of the carpets and because the Landlord felt that leaving the carpets in that condition could mean the odour would worsen and possibly compromise the building structure, the Landlord filled out and hand-delivered the 1-Month Notice to End Tenancy for Cause to the Tenant on May 31, 2018. The Notice contained instructions for the Tenant and provided a move-out date of June 30, 2018. The Notice stated the reasons for the end of the tenancy as:

- Tenant or a person permitted on the property by the Tenant has put the Landlord's property at significant risk.
- Tenant or a person permitted on the property by the Tenant has caused extraordinary damages to the unit/site or property/park.
- Tenant has not done required repairs of damage to the unit/site.

The Landlord acknowledged that he did not do any further research as to why the carpets may be damp; however, believed that there was no plumbing that would affect the carpets and also

noted that the damage seems to only be in the Tenant's rental unit and not in any of the other tenants' units.

The Tenant testified that the carpets are damp and that he has to wear his shoes in the rental unit so his socks don't get wet. He stated that the move-in condition report indicated there were some stains on the carpets, but didn't explain why the carpets were currently in such poor condition. The Tenant believed that the source of the dampness is coming from under the carpets and admitted that it has been getting worse. The Tenant did not approach the management of the building as he felt they would blame him for the damage. Although the Tenant has a dog, he is adamant that the dog is well trained and does not urinate on the carpets.

The Tenant testified that he is elderly, has had two strokes and is on disability. He stated that all his money goes towards his rent and that he is looking for a roommate to share the expenses. Although the Tenant eluded that the mould in the carpets may have contributed to the significant health concerns of his previous roommates, he still wants to continue to live in the rental unit.

### Analysis

The Landlord has issued the Notice based on three reasons with the first and second being that the Tenant has put the Landlord's property at significant risk, contrary to Section 47(1)(d) of the Act and that the Tenant has caused extraordinary damage to the unit contrary to Section 47(1)(f) of the Act.

When considering these reasons, I reference Section 32 of the Act that speaks to the Tenant's responsibility to repair damage to the rental unit that is caused by the actions or neglect of the Tenant and that the Tenant is not required to make repairs for reasonable wear and tear.

Although the Landlord has testified that the damage to the carpets is significant and beyond reasonable wear and tear, I find that the Landlord failed to provide sufficient evidence that the state of the carpet places the Landlord's property at significant risk. The damage to the carpet may be extraordinary; however, I do not find that the Landlord provided sufficient evidence that the Tenant is the one responsible for the extraordinary damage.

The third reason for the issuance of the Notice is that the Landlord claimed that the Tenant has not done required repairs of damage to the unit contrary to Section 47(1)(g) of the Act. This Section defines the responsibilities of the Tenant to make repairs that they are responsible for and also provides the Tenant a chance to make the repairs "within a reasonable time." As noted above, there are still some questions as to the source of the damage; nevertheless, the Landlord issued the Tenant the Notice on the same day the damage was discovered and, I find, did not provide the Tenant a reasonable amount of time to respond to the request to make repairs.

After reviewing the testimony and evidence of both the Tenant and the Landlord, I find that the Landlord has not met the burden of proof that the reasons for the Notice to End Tenancy for Cause, dated May 31, are valid and, therefore, I find that the Notice should be canceled. The tenancy shall continue until such time it is ended in accordance with the Act.

I should note that during the hearing, the Landlord acknowledged that it was not his intention to evict the Tenant until he observed the condition of the carpet and learned that the Tenant did not have the means to repair the carpet and additionally, did not believe it was his responsibility to repair the carpet. I have raised the possibility that the moisture in the carpet may not be as a result of the Tenant's actions or neglect and encouraged both parties to work together to determine the source and then to address any remedies through the Act.

### Conclusion

The Tenant's Application to cancel the Notice is upheld and the tenancy shall continue until it is ended in accordance with the *Residential Tenancy Act*.

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: August 15, 2018

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Residential Tenancy Branch