



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding GREATER VICTORIA HOUSING SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes:

CNC, CNR, SRE, O

### Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied:

- set aside a One Month Notice to End Tenancy for Cause;
- to set aside a Ten Day Notice to End Tenancy for Unpaid Rent;
- to suspend or set conditions on the Landlord's right to enter the rental unit; and
- for "other".

The Advocate for the Tenant stated that the Tenant did not intend to apply to set aside a Ten Day Notice to End Tenancy for Unpaid Rent and she withdrew this portion of the Application for Dispute Resolution.

The Advocate for the Tenant stated that on September 13, 2018 and on October 04, 2018 some hearing documents were served to the Landlord, although she was not certain what documents were served. She stated that not all of the documents were served at the same time as she could not afford to print off all of the documents that were emailed to the Tenant by the Residential Tenancy Branch.

The female Agent for the Landlord stated that the Landlord received the following documents from the Tenant:

- two pages of the Notice of Dispute Resolution Proceeding;
- Residential Tenancy Branch instructions for the Applicant and the Respondent;
- a Residential Tenancy Branch policy guideline;
- two pages of the Application for Dispute Resolution;
- a document titled Reasons for This Lawsuit; and
- an email related to noise from a neighboring business.

As the Landlord acknowledged receiving the above documents, the documents submitted by the Tenant as evidence were accepted as evidence for these proceedings. As the Landlord does not acknowledge receiving any other evidence from the Tenant and the Advocate for the Tenant is not certain what was served to the Landlord, the aforementioned evidence is the only evidence that will be accepted as evidence from the Tenant.

The female Agent for the Landlord stated that in several places in the Tenant's Application for Dispute Resolution the Tenant directs the Landlord to "REFER TO PAPER APPLICATION". She stated that the Landlord has never received a "paper application. As the Landlord does not acknowledge receiving the hard copy of the Tenant's Application for Dispute Resolution, it is not accepted as evidence for these proceedings.

The female Agent for the Landlord stated that the Landlord is aware that the Tenant applied to set aside a One Month Notice to End Tenancy for Cause and to suspend or set conditions on the Landlord's right to enter the rental unit, which is the information provided to the Landlord in the hard copy of the Tenant's Application for Dispute Resolution.

The female Agent for the Landlord was asked if she would like an adjournment to provide the Landlord with an opportunity to view the hard copy of the Tenant's Application for Dispute Resolution. She stated that the Landlord was prepared to proceed with the hearing and that an adjournment was not required.

On October 10, 2018 the Landlord submitted evidence to the Residential Tenancy Branch. The female Agent for the Landlord stated that this evidence was served to the Tenant, via registered mail, on October 10, 2018. The documents were reviewed with the Tenant; the Advocate for the Tenant acknowledged receiving this evidence; and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

All of the documents accepted as evidence have been reviewed; however they are only referenced in this decision if they are directly relevant to my findings.

### Preliminary Matter

The female Agent for the Landlord stated that the female Respondent is not the Landlord and she asked that the Application for Dispute Resolution be amended to remove the name of that Respondent. The Advocate for the Tenant agreed to the proposed amendment and the Application for Dispute Resolution was amended accordingly.

### Issue(s) to be Decided

Should the One Month Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?

Is there is a need for an Order suspending or setting conditions on the Landlord's right to enter the rental unit?

### Background and Evidence

The Landlord and the Tenant agree that this tenancy began in 2013 and that the Tenant is still occupying the rental unit.

The Landlord and the Tenant agree that on August 31, 2018 a One Month Notice to End Tenancy for Cause was personally served to the Tenant, which declared that the Tenant must vacate the rental unit by September 30, 2018. The parties agree that the reasons cited for ending the tenancy on the Notice to End Tenancy are:

- the Tenant has engaged in illegal activity that has damaged the Landlord's property;
- the Tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or well-being of another occupant; and
- the Tenant has engaged in illegal activity that has, or is likely to, jeopardize a lawful right or interest of another occupant or the landlord.

The male Agent for the Landlord stated that this One Month Notice to End Tenancy was served to the Tenant, in part, because the Landlord believes the Tenant intentionally activated a fire alarm on August 31, 2018 at 4:50 a.m. The Landlord contends that this act resulted in the evacuation of the building and it endangered the safety of building occupants and the firefighters.

The male Agent for the Landlord stated that he viewed the video images captured by the surveillance camera on August 31, 2018 at approximately 4:50 a.m. He submitted a copy of a still photograph from that video which shows a person crossing the lobby of

the residential complex. He stated that this person is walking toward the fire alarm that was activated, which is not captured by the surveillance camera, and that the alarm is activated a few seconds after the person exits the range of the camera. He stated that based on the timing of the alarm he believes the person in the photograph activated the alarm.

The photograph of the person crossing the lobby shows the person is wearing baggy pants; a dark jacket; and his face is almost entirely covered with an article that appears to be a scarf.

The Landlord submitted a second photograph of a male in the garage, which the male Agent for the Landlord stated was captured by video surveillance earlier in the day on August 31, 2018. He stated that the video surveillance shows the Tenant's vehicle entering the garage and drive in the direction of the Tenant's parking space. He stated that the Tenant's vehicle leaves the range of the surveillance camera and shortly thereafter the male can be seen walking into range of the surveillance camera from the area of the Tenant's parking space. He stated that based on the timing of these observations he concluded that the Tenant is the male in the second photograph.

The male Agent for the Landlord stated that he concluded that the person in the lobby photograph is the same person as the male in the second photograph as they are wearing the same pants and jacket.

The male Agent for the Landlord stated that the matter was reported to the police; that a police officer has viewed the video surveillance; that the police officer also concluded that the person in the lobby photograph is the same person as the male in the second photograph; and that the police officer has recommended that charges be laid against the Tenant.

The Tenant stated that he is not the person in either of the aforementioned photographs. He stated that he believes this is a photograph of a person who has frequented the building on several occasions. He provided a name for the person, which is not being recorded in this decision for privacy reasons. He stated that the police have not spoken with him in regards to the incident on August 31, 2018.

The male Agent for the Landlord stated that other occupants of the building believe the Tenant activated the fire alarm however he acknowledges they have not submitted any proof to corroborate that suspicion.

The male Agent for the Landlord stated that this One Month Notice to End Tenancy was served to the Tenant, in part, because the Landlord believes the Tenant wrote some graffiti on the wall outside of his rental unit. The Landlord submitted no evidence to corroborate this suspicion.

The Tenant stated that he did not write any graffiti on the wall outside of his rental unit.

During the hearing the Tenants and the Agents for the Landlord referred to other issues related to this tenancy however they are not summarized here because they are not relevant to the Landlord's attempt to end this tenancy on the basis of illegal activity.

The Tenant stated that he is seeking an Order suspending or setting conditions on the Landlord's right to enter the rental unit. He stated that he believes an agent for the Landlord has entered his rental unit on three occasions without proper authority. The Tenant submitted no evidence to corroborate this allegation.

The male Agent for the Landlord stated that an agent for the Landlord has never entered the rental unit without proper authority.

### Analysis

Section 47(1)(e) of the *Act* authorizes a landlord to end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has caused or is likely to cause damage to the landlord's property; has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property; or has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord.

I find that the Landlord has submitted insufficient evidence to establish that the Tenant has engaged in illegal activity. Specifically, I find that the Landlord has submitted insufficient evidence to establish that the Tenant is the individual who activated the fire alarm on August 31, 2018.

On the basis of the male Agent for the Landlord's description of the video surveillance footage from the lobby on August 31, 2018, I accept that the person photographed in the lobby is probably the individual who activated the fire alarm. I find there is insufficient evidence, however, to establish that the person in that photograph is the Tenant.

In concluding that there is insufficient evidence to establish that the person in the lobby photograph is the Tenant I was heavily influenced by the fact the person's face is almost entirely covered and is, therefore, unrecognizable.

In concluding that there is insufficient evidence to establish that the person in the lobby photograph is the Tenant I was influenced, to some degree, by the Tenant's testimony that he is not the individual in the photograph.

In adjudicating this matter I have placed limited weight on the photograph of the male in the garage that was taken earlier in the day on August 31, 2018. Even if I accepted that the Tenant is the person in that photograph I cannot, based on the photographs submitted in evidence, conclude that the two images are of the same person. Although the clothing in both photographs is similar, the quality of the photograph from the garage is of poor quality and is insufficient for me to conclude that the clothing is identical. In addition, the clothing is very common and is relatively nondescript, which makes it difficult for me to conclude that the clothing is identical.

In adjudicating this matter I have placed limited weight on the male Agent for the Landlord's testimony that the police officer who viewed the video surveillance tapes also concluded that the person in the first photograph is the same person as the person in the second photograph. I find that is hearsay evidence, which is fraught with frailties.

In adjudicating this matter I have placed limited weight on the male Agent for the Landlord's testimony that other occupants of the building believe the Tenant activated the fire alarm. As there is no evidence to corroborate that suspicion, I find that the uncorroborated opinions of other occupants have little evidentiary value.

I also find that the Landlord has submitted insufficient evidence to establish that Tenant vandalized the wall outside of his rental unit. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Landlord's submission that the Tenant wrote graffiti on the wall of that refutes the Tenant's testimony that he did not write graffiti on the wall.

I find that the Landlord has submitted insufficient evidence to establish that the Landlord has grounds to end this tenancy pursuant to section 47(1)(e) of the *Act*. I therefore grant the Tenant's application to set aside the One Month Notice to End Tenancy for Cause that is the subject of these proceedings.

I find that the Tenant has submitted insufficient evidence to establish that an agent for the Landlord has entered his unit without lawful authority. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenant's submission that an agent for the Landlord has entered the rental unit without authority or that refutes the Landlord's submission that this did not occur. I therefore dismiss the application for an Order suspending or setting conditions on the Landlord's right to enter the rental unit.

### Conclusion

The One Month Notice to End Tenancy for Cause that is the subject of these proceedings is set aside. This tenancy shall continue until it is ended in accordance with the *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: October 24, 2018

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Residential Tenancy Branch