



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, CNC, LRE, OLC, FFT

### Introduction

This hearing dealt with the tenants' Application for Dispute Resolution (the Application) pursuant to the *Residential Tenancy Act* ("the Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord and Tenant A.T. attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Tenant A.T. (the tenant) stated she was representing the interests of both tenants in this matter.

While I have turned my mind to all the documentary evidence, including witness statements and the testimony of the parties, only the relevant portions of the respective submissions and/or arguments are reproduced here.

The landlord acknowledged receipt of the Application and evidence which was sent by registered mail to them on July 24, 2018. In accordance with sections 88 and 89 of the Act, I find the landlord was duly served with the Application and the tenants' evidence.

The landlord stated that they did not provide their evidence to the tenants.

Rule 3.15 of the Residential Tenancy Branch Rules of Procedure states that documentary evidence that is intended to be relied on at the hearing by the respondent must be received by the applicant not less than 7 days before the hearing. I find that the landlord did not serve the tenants with their evidence and that the tenants may be prejudiced by this as they did not have a chance to respond to the landlord's evidence. For this reason the landlord's evidence is not accepted for consideration.

At the outset of the hearing the landlord stated that the tenants had paid the rent and they had withdrawn the 10 Day Notice served to the tenants. The tenant confirmed this and requested to amend their Application to withdraw their dispute of the 10 Day Notice.

I allowed this amendment pursuant to section 64 of the Act.

The tenant confirmed that they received the One Month Notice which was personally served to them on July 18, 2018. In accordance with section 88 of the Act, I find the tenants were duly served with the One Month Notice.

#### Issue(s) to be Decided

Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Are the tenants entitled to an order requiring the landlord to comply with the Act, regulation or tenancy agreement?

Are the tenants entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit?

Are the tenants entitled to recover the filing fee for this application from the landlord?

#### Background and Evidence

The landlord and the tenant agreed that this tenancy commenced on January 01, 2014, with a current monthly rent in the amount of \$1,100.00, which the landlord states is due on the first day of each month. The tenant stated that they do not have a written agreement and that the landlord has accepted rent after the first of the month on a consistent basis. The landlord testified that they currently retain a security and pet damage deposit in the amount of \$750.00.

A copy of the signed July 18, 2018, One Month Notice was entered into evidence by the tenants. In the One Month Notice, requiring the tenant to end this tenancy by July 18, 2018, the landlord cited the following reasons for the issuance of the One Month Notice:

*Tenant is repeatedly late paying rent.*

*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 engaged in illegal activity that has, or is likely to:*

- *damage the landlord's property*
- *'adversely affect the quiet enjoyment, security safety or physical well-being of another occupant.*

*Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.*

*Tenant has not done required repairs to the unit/site*

In the Details of Cause section of the One Month Notice, the landlord has indicated that:

*"the tenant caused property damage, (smashed glass window) the cops had to intervene (his girlfriend call 911) cops had to break down front door. The patio door was broken as well."*

The landlord stated that the tenants have been late paying the monthly rent in every month of 2018.

The landlord submitted that there was an incident which occurred at some point around May 17, 2018, in which Tenant G.S. and Tenant A.T. were involved in an altercation and Tenant A.T. called 911. The landlord testified that the police attended the rental unit but Tenant G.S. would not leave the rental unit so the SWAT team was required to retrieve the tenant which resulted in the SWAT team breaking down the door and smashing a window.

The landlord stated that he was alerted to the police at his house and arrived to find the door and window broken among other damages as well as the house not being secure

as there was no one at the rental unit and anyone could access it. The landlord stated they fixed the damage the next day.

The landlord stated that Tenant A.T. had a no contact order against Tenant G.S., who was not at the rental unit for a period of time after the incident, but has moved back into the rental unit now.

The tenant confirmed that the events that the landlord described had occurred and indicated to the landlord that she was grateful for the landlord fixing the window and the door in a reasonable amount of time which allowed her to move back into the rental unit. The tenant stated that they had paid the landlord back for some of the repairs. The tenant stated that she had the order lifted against her partner, Tenant G.S. and confirmed that Tenant G.S. is living in the rental unit again.

The tenant stated that the landlord has always accepted late rent and as there is no written tenancy agreement the tenant submitted that payment of rent at different times in the month was an accepted operating practise of the tenancy.

### Analysis

Section 47 of the *Act* allows a landlord to issue a Notice to End Tenancy for Cause to a tenant if the landlord has grounds to do so.

Section 47 of the *Act* provides that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the One Month Notice. As the tenants disputed this notice on July 19, 2018, and since I have found that the One Month Notice was served to the tenants on July 18, 2018, I find the tenant has applied to dispute the One Month Notice within the time frame provided by section 47 of the *Act*. I find that the landlord has the burden to prove that they have sufficient grounds to issue the One Month Notice for the tenants.

I have reviewed all documentary evidence and affirmed testimony. Based on the affirmed testimony of all parties, as well as the balance of probabilities, I find that the tenants have put the property at significant risk and that Tenant G.S. has engaged in illegal activity which has damaged the landlord's property as well as adversely affected the quiet enjoyment, security safety or physical well-being of another occupant.

I find that it is undisputed that the police attended the rental unit due to Tenant G.S. engaging in illegal activity which has adversely affected the quiet enjoyment, safety and physical well-being of Tenant A.T. who had to call the police due to Tenant G.S.'s actions. As Tenant G.S. has returned to living in the rental unit with Tenant A.T., I find there is a risk that a similar situation is likely to happen in the future.

Based on the undisputed affirmed testimony, I find that the actions of the tenants put the landlord's property at significant risk with the SWAT team damaging the rental unit to retrieve Tenant G.S. and the rental unit being left abandoned and unsecure.

For the above reasons, I find the landlord has sufficient grounds to issue the One Month Notice and to end this tenancy for cause. For this reason the tenants' Application to set aside the One Month Notice is dismissed, without leave to reapply.

Section 55(1) of the *Residential Tenancy Act* provides that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the Arbitrator must grant the landlord an order of possession if the notice complies with section 52 of the *Act*. I find that the One Month Notice complies with section 52 of the *Act*.

The landlord testified that the tenant had sent the monthly rent for September 2018 but that the landlord was not able to access it electronically as the password was not working. For this reason I grant a two (2) day Order of Possession to the landlord, which they are at liberty to enforce right away or wait until the end of September 2018 if they are able to access the monthly rent payment for September 2018.

As this tenancy is ending, I find that the tenants' Application to have the landlord comply with the Act and to suspend or set conditions on the landlord's right to entry are no longer applicable and they are dismissed, without leave to reapply.

As the tenants have not been successful in their Application, I dismiss their request to recover the filing fee from the landlord, without leave to reapply.

### Conclusion

I dismiss the tenants' Application in its entirety, without leave to reapply.

I grant an Order of Possession to the landlord **two days after service of this Order** on the tenant. Should the tenant(s) or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: September 18, 2018

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Residential Tenancy Branch