



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC   RP

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on August 9, 2018 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a One Month Notice to End Tenancy for Cause, dated July 31, 2018 (the "One Month Notice"); and
- an order that the Landlords make repairs to the unit, site, or property.

The Tenant attended the hearing and was assisted by S.A., an advocate. The Tenant called one witness, N.J. The Landlords attended the hearing. All giving oral testimony provided a solemn affirmation.

The Tenant testified the Application package was served on the Landlords in person. M.P. acknowledged receipt. Further, M.P. testified the Landlords' documentary evidence was served on the Tenant by leaving a copy at his door. The Tenant acknowledged receipt. No issues were raised during the hearing with respect to service or receipt of the above documents. Pursuant to section 71 of the *Act*, I find the Landlords' documentary evidence was sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to 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.

### Issues to be Decided

1. Is the Tenant entitled to an order cancelling the One Month Notice?
2. Is the Tenant entitled to an order that the Landlords make repairs to the unit, site, or property?

### Background and Evidence

The parties agreed the tenancy began in 2002. Currently, rent in the amount of \$975.00 per month is due on the first day of each month. Although the parties confirmed a security deposit was paid, neither could confirm the amount.

The Landlords wish to end the tenancy. Accordingly, the Landlords issued the One Month Notice. According to M.P., the One Month Notice was posted on the door of the Tenant's rental unit on July 31, 2018. The Tenant acknowledged receipt of the One Month Notice on that date.

The One Month Notice was issued on the following bases:

- Tenant or a person permitted on the property by the Tenant has
  - o significantly interfered with or unreasonably disturbed another occupant or the Landlord;
  - o seriously jeopardized the health or safety or lawful right of another occupant or the Landlord;
  - o put the Landlords' property at significant risk.
- Tenant has engaged in illegal activity that has, or is likely to
  - o adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the Landlord;
  - o jeopardize a lawful right or interest of another occupant or the Landlord.
- Tenant has caused extraordinary damage to the unit/site or property/park.
- Tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.
- Rental unit/site must be vacated to comply with a government order.

Specifically, M.P. testified that the Tenant has caused repeated disturbances in the rental property. A number of breach letters were submitted in support. In a Breach Letter dated October 20, 2016, the Landlords set out clause 17 of the tenancy agreement. Hand-written comments described the following:

*Tenant complained once before, noise + music playing in the middle of the night. Also have a few issues regarding the inside of the suite.*

[Reproduced as written.]

In reply, the Tenant testified he did not remember receiving the Breach Letter dated October 20, 2016.

In a subsequent Breach Letter, dated March 8, 2017, the Landlords again set out clause 17 of the tenancy agreement. Hand-written comments described the following:

*WE GOT A COMPLAINT FROM A TENANT REGARDING LOUD NOISE IN THE MIDDLE OF THE NIGHT. THIS WAS MENTIONED TO YOU BEFORE.*

[Reproduced as written.]

In reply, the Tenant testified he did not remember receiving the Breach Letter dated March 8, 2017.

In a more recent Breach Letter, dated July 17, 2018, the Landlords again set out clause 17 of the tenancy agreement. Hand-written comments described the following:

*DISTURBING TENANT DOWNSTAIRS BELOW IN THE MIDDLE OF THE NIGHT (LOUD NOISES) NUMEROUS TIMES + VERBALLY MENTIONED TO HIM.*

[Reproduced as written.]

Each of the letters described above directed the Tenant to correct the breach immediately.

The Tenant testified he remembers receiving the breach letter dated July 17, 2018. However, he testified he goes to bed at around 9:30 p.m. and does not play music at night. The Tenant suggested he has nightmares and sometimes falls out of bed, which might have disturbed another tenant.

M.P. testified further that there have been a number of other instances that did not result in a breach letter being issued, but that there have been numerous conversations with the Tenant about the ongoing noise complaints. This was not disputed by the Tenant.

Further, M.P. described a more recent incident on July 25, 2018. The Tenant left the stove on in his rental unit. Smoke triggered the alarm and the fire department attended. The M.P. testified there was so much smoke that the fire department took two hours to remove it. An incident report was submitted in support.

In reply, the Tenant testified that he had been drinking and must have forgotten about the stove. He stated he was “in a fog” and went to bed. The Tenant stated he did not remember many details about the incident.

Finally, the Landlords testified the Tenant has caused damage to the rental unit. The Landlords submitted photographs depicting staining on the ceiling. The photographs also depict an unclean toilet and bathtub, kitchen stove and fridge.

In reply, the Tenant acknowledged the rental unit is not clean but that he is taking steps to do so. He confirmed that some of the stains are due to his wife’s heavy smoking. However, S.A. submitted that the condition of the rental unit does not constitute extraordinary damage. For example, there are no holes in the walls or other significant damage. Rather, S.A. submitted that the rental merely needs to be cleaned and painted, which the Tenant is taking steps to complete.

In support, N.J., an outreach worker, testified she has assisted the Tenant to obtain resources and visited his house in mid-August 2018. N.J. testified there was “a little discolouration” on the walls and ceiling, but that the unit was otherwise “in good condition”.

S.A. was given the opportunity to make further submissions at the conclusion of the hearing. She submitted that the Tenant has not breached a material term of the tenancy agreement. S.A. also noted that the incident on July 25, 2018, was a solitary incident and is not an unreasonable and ongoing issue. S.A. suggested further that the incident on July 25, 2018 did not present a risk to the Landlords' property or to other tenants, and that there is no medical evidence to indicate anyone was injured. In addition, S.A. advised that the Tenant lives with health issues including depression, arthritis, and alcohol use. She emphasized the importance of stable housing for the Tenant and suggested the Tenant could end up on the street if the tenancy was to end.

The Tenant did not make any submissions regarding repairs needed in the rental unit.

### 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 for cause in the circumstances described therein. In this case, the Landlords wish to end the tenancy on the bases outlined above.

I find it is more likely than not that the Tenant has disturbed other occupants at the rental property and that the ongoing issues have not been rectified within a reasonable despite being provided with several notices to do so. Although the Tenant could not recall receiving two of the breach letters relied upon by the Landlords, I find it is more likely than not that the Tenant was provided with three written notices regarding disturbances. I also accept the testimony of M.P., who testified that there have been numerous other conversations with the Tenant about this and other issues.

Further, I find it is more likely than not that the Tenant put the Landlords' property at significant risk by leaving his stove unattended, which resulted in significant amounts of smoke in the rental unit and presented a risk to the rental property that fortunately did not materialize. The Tenant acknowledged his responsibility for the incident and that alcohol was a factor, which is commendable. However, I disagree with the submissions of S.A. who suggested the incident did not put the Landlords' property or other tenants at significant risk. The risk presented simply did not materialize to the extent it might have.

In light of my findings above, it has not been necessary for me to consider the other bases indicated on the One Month Notice. I do note, however, that while I might empathize with the Tenant's circumstances, there is no provision under the *Act* that permits me to consider hardship as a basis for continuing or extending a tenancy.

To summarize, I find that the Tenant's Application is dismissed, without leave to reapply. When a tenant's application to cancel a notice to end tenancy is dismissed, and the notice complies with section 52 of the *Act*, section 55 of the *Act* requires that I issue an order of possession in favour of the Landlord. Having reviewed the One Month Notice, I find it complies with section 52 of the *Act*. Accordingly, I grant the Landlords an order of possession, which will be effective two (2) days after service on the Tenant.

### Conclusion

Pursuant to section 55 of the *Act*, I grant the Landlords an order of possession, which will be effective two (2) days after service on the Tenant. The order may be filed in 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 27, 2018

---

Residential Tenancy Branch