



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SOMA APARTMENTS/ TERRA CREST PROPERTY MANAGEMENT  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes            CNC, FF

### Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the tenant served the landlord with the notice of hearing package and the submitted documentary evidence in person. Both parties confirmed the landlord served the tenant with the submitted documentary evidence. Neither party raised any issues with service. I accept the undisputed affirmed testimony of both parties and find that both parties have been sufficiently served with the notice of hearing package and the submitted documentary evidence as per section 90 of the Act.

At the outset the tenant's agent (the tenant) requested a summons for the landlord to provide documents. The tenant seeks that the landlord provide all historical invoices, emails, correspondence "that would provide insight as to the provenance and scope of the bedbug population in the building" as well as a witness. The landlord's counsel (the landlord) argued that the named witness is also being called as a witness for the landlord and that the named relevant documentation referred to has been provided to the tenant. The tenant argued that there are some documents missing. When asked the tenant could not specify what particular documents were missing or how they would be relevant. As such, I find in the circumstances that the tenant's request for a summons of document and a witness is unnecessary and is dismissed.

Extensive discussions from both parties prevented the hearing from being completed. The hearing was adjourned and both parties were advised that no new evidence was to be

submitted, nor would it be accepted exception was given for the tenant to provide a list of the submitted documentary evidence.

On October 1, 2018 the hearing was reconvened with both parties.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 Month Notice?

Is the tenant entitled to recovery of the filing fee?

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 submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on July 1, 2005 on a month-to-month basis as per the signed tenancy agreement dated July 8, 2005. The monthly rent began as \$516.00 and a security deposit of \$258.00 was paid.

On May 31, 2018, the landlord served the tenant with the 1 Month Notice dated May 31, 2018. The 1 Month Notice sets out an effective end of tenancy date of June 30, 2018 and that it was being given as:

- the tenant or 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; or
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The details of cause stated:

*Repeated issues with bedbugs, negligent disposal of infested items in hallway and parking lot, not complying with property preparation and proper disposal of furniture items/clutter to get the suite ready for bed bug treatment. Tenant had spread bed bugs on the 4<sup>th</sup> floor and potentially spread the bed bugs in lobby, common area, elevator and parkade.*

Both parties confirmed that the landlord served the tenant with the 1 Month Notice dated May 31, 2018 in person on May 31, 2018.

The landlord claimed that the tenant in December of 2017 was notified of proper protocol in how to deal with the bedbug issues, but had been uncooperative and failed to act responsibly which jeopardized the health or safety of other occupants and put the landlord's property at significant risk.

The tenant disputes the landlord's notice stating that there have been bed bugs in the building for many years, including in the tenant's suite. The tenant claims that he had hired a professional disposal service, cleaned and sanitized all his belongings and that no bed bugs were found.

The hearing was commenced, but was adjourned due to a lack of time. Counsel for the landlord and the agent on behalf of the tenant had extensive issues and questions regarding the landlord's first witness. The landlord's counsel estimated an additional 2 hours for the remaining portion of the landlord's case. The tenant's counsel estimated an additional 4 ½ hours of cross examination and the presentation of the tenant's case for an estimated total of 6 ½ hours.

Both parties were cautioned that no further evidence was to be submitted nor would it be accepted. Both parties confirmed their email addresses for delivery of the notice of an adjourned hearing letter that would be attached to this interim decision.

The landlord has submitted that:

On December 16, 2017 the landlord was notified by another tenant that bedbugs were discovered in a mattress left in the hallway. The landlord investigated and discovered that the mattress belonged to the named tenant and that it was infested with bedbugs. The landlord stated at that time, the tenant never reported any issues of bedbugs. On December 18, 2017 the named tenant's unit was inspected and bedbugs were found. On December 19, 2017 the landlord provided to the tenant written instructions on how to prepare for a bedbug treatment and to wrap the mattress. On December 21, 2017 the landlord stated that the rental unit was not properly prepared for treatment, but treatment in the unit was made in any event, but that the tenant was notified that his efforts were not sufficient. Subsequently the landlord reported that the tenant had refused entry for treatment and that it was re-scheduled. The landlord stated that on January 12, 2018 the neighboring tenant reported via email to the landlord that bedbugs were discovered next to the named tenant's unit. A pest control inspection discovered no bedbugs in the neighboring unit, but found some in the named tenant's unit. In April 2018 another neighboring tenant discovered bed bugs. A pest control service was called and no bedbugs were discovered in the neighboring tenant's unit, but a bed bug infestation was discovered in the named tenant's unit. The landlord scheduled treatment on May 4, 2018, but the tenant had refused entry for treatment. The treatment was re-scheduled for May 9, 2018 when it was discovered the tenant had still not prepared the unit adequately for treatment. The landlord stated that the tenant was given a caution notice to properly prepare for the treatment or that a notice to end tenancy could be issued. The treatment was rescheduled for May 16,

2018. On May 16, 2018, the rental unit still had not been prepared adequately for treatment. On May 23, 2018 the landlord noted that minor attempts at preparing for treatment were made, but were still considered insufficient. On May 27, 2018 the pest control company treated the rental unit, but it was noted that the tenant had still failed to sufficiently prepare the unit for treatment. It was later discovered that the tenant had moved items from the rental unit to the parking stall area without proper containment (bagged). The landlord stated that on May 28, 2018 another treatment was cancelled as the tenant continued to insufficiently prepare the unit for treatment. The tenant was subsequently served with the notice to end tenancy on May 31, 2018. The landlord claims that the tenant has been provided with repeated cautions and warnings to properly prepare the rental unit for bed bug treatment, but has failed to take the necessary steps to not jeopardize the landlord's property and other tenants.

The tenant argued that there was a history of bedbugs in the rental building which caused a recent outbreak of bed bugs. The tenant argued that no email notice was received concerning bed bugs found in the area. The tenant argued that the cause of the bedbugs had resulted in the bed bugs travelling through the building and as such, the landlord failed to mitigate any efforts to contain and eradicate the bed bugs. The tenant argued that the tenant had diligently dealt with the bed bug issue by educating himself, purchasing and using a commercial bed bug spray in his efforts to stop the issue.

The landlord has relied upon the provided witness testimony during the hearing.

### Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

Both parties confirmed that the landlord served the tenant with the 1 Month Notice dated May 31, 2018 on May 31, 2018 in person. Both parties have agreed that there is a bed bug issue present. In this case, the landlord claims that the tenant after being notified of a bed bug issue failed to act responsibly by cooperating with the landlord's pest control efforts. In that the landlord gave preparation instructions to prepare the rental unit for bed bug treatment. The landlord has provided a series of cautions and warnings provided to the tenant regarding the identification of bed bugs, which was disputed by the tenant. The landlord provided instructions and scheduled pest control services to resolve the bed bug issue. The landlord provided undisputed affirmed testimony that on atleast one occasion the tenant refused entry to the landlord's pest control service provider to perform treatment. On this basis, I find that the landlord has provided sufficient evidence that the tenant after being notified of the bed bug issue by the landlord failed to act reasonably in assisting for the treatment of bed bugs by the landlord's pest control service. The one month notice dated May 31, 2018 is upheld. The tenant's application to cancel the one month notice is dismissed.

Pursuant to section 55 of the Act, the one month notice dated May 31, 2018 was upheld and the landlord is entitled to an order of possession. As the effective end of tenancy date has now passed, I grant the landlord an order of possession effective 2 days after service upon the tenant.

Conclusion

The tenant's application is dismissed.

The one month notice dated May 31, 2018 is upheld. The landlord is granted an order of possession.

The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

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 22, 2018

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Residential Tenancy Branch