



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking cancellation of a One Month Notice to End Tenancy for Cause (the “One Month Notice”).

I note that Section 55 of the *Act* requires that when a tenant submits an Application seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with Section 52 of the *Act*.

The hearing was convened by telephone conference call and was attended by the Tenant, a witness for the Tenant (“Witness #1”), two agents for the Landlord, A.M. and M.M. (the “Agents”), as well as a witness for the Landlord (“Witness #2”); all of whom provided affirmed testimony. The parties were given the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties also confirmed receipt of the Application, the Notice of Hearing, and copies of the documentary evidence before me in accordance with the *Act* and the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”).

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision.

At the request of the parties, copies of this decision and any orders issued in their favor will be sent to them in the manner requested during the hearing.

## Preliminary Matters

### **Preliminary Matter #1**

At the outset of the hearing I identified that the name of the landlord listed in the tenancy agreement and the name of the landlord listed in the Tenant's application are different. The Agents testified that R.M.I. took over management of the property in 2015 and is now the landlord. The Tenant was in agreement that R.M.I. took over management of the property from the original landlord sometime in 2015. Based on the above, I am satisfied that R.M.I. meets the definition of a landlord pursuant to section 1 of the *Act* and will therefore be referred to as the "Landlord" throughout this decision.

### **Preliminary Matter #2**

Although settlement was proposed during the hearing, ultimately a settlement agreement could not be reached between the parties. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Residential Tenancy Branch (the "Branch") under Section 9.1(1) of the *Act*.

### **Preliminary Matter #3**

Although two witnesses were present at the start of the hearing, they were excluded from the proceedings while the parties gave their evidence and testimony. Ultimately neither party called their witness during the hearing to present any testimony for my consideration.

## Issue(s) to be Decided

Is the Tenant entitled to cancellation of the One Month Notice?

If the Tenant is unsuccessful in cancelling the One Month Notice, is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

## Background and Evidence

The tenancy agreement in the documentary evidence before me states that the month-to-month tenancy began on August 1, 2005, at a monthly rent amount of \$565.00. In the hearing the parties agreed that rent is due on the first day of each month as stated in

the tenancy agreement and that rent is currently \$666.00 per month. The parties also agreed that a \$282.50 security deposit was paid, which the Landlord still holds.

The Agents stated that due to numerous and repeated complaints regarding noise and behavior, damage to the rental unit, and repeated failure to comply with health and fire safety standards, a One Month Notice was posted to the door of the Tenant's rental unit on August 16, 2018. In the hearing the Tenant confirmed that he received the One Month Notice from his door on August 16, 2018.

The One Month Notice in the documentary evidence before me, dated August 16, 2018, has an effective date of September 30, 2018, and states the following reasons for ending the tenancy:

- the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- the tenant or a person permitted on the residential property by the tenant seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
- the tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk;
- 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;
- the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that 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;
- the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property; and
- the tenant has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable time after the landlord gave written notice to do so.

Although the One Month Notice lists illegal activity as a ground for ending the tenancy, the Agents stated that there has been no illegal activity on the part of the Tenant. They also stated that neither the Tenant nor a person permitted on the property by the Tenant

has seriously jeopardized the lawful right or interest of the Landlord or another occupant.

The Agents testified that the Tenant has jeopardized the health and safety of the Landlord or another occupant of the building and put the building at significant risk by removing the smoke detector in the rental unit, storing a significant amount of possessions in the rental unit in a manner that makes the rental unit a fire safety risk, and by failing to maintain sanitary conditions in the rental unit thereby attracting roaches. In support of this testimony the Agents provided copies of several notices to enter the property for the purpose of conducting fire inspections.

The Tenant denied storing a significant amount of possessions in the rental unit in a manner that makes the rental unit a fire safety risk or failing to maintain sanitary conditions in the rental unit. The Tenant stated that the last time the fire department attended the building for a fire alarm; he was advised by them that his unit did not pose a fire safety risk and testified that his rental unit is cleaned regularly as he has young children. The Tenant also denied being the cause of the roach problem in the building, stating that it only began three years ago when his neighbour moved in. Despite the foregoing the Tenant acknowledged that he does remove the fire alarm while he is cooking as goes off regularly and he wishes not to disturb other occupants of the building.

The Agents stated that the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord of the residential property on numerous occasions and submitted complaint letters from four other occupants of the building regarding these disturbances. The Agent M.M. stated that she has personally been yelled at and intimidated by the Tenant and that in addition to constant noise and fighting in the rental unit at all hours, the Tenant also watches his television on the deck, disturbing other occupants. The Agents stated that other occupants of the building have even moved out of the building due to the constant disruptions and inappropriate behavior and comments from the Tenant.

The Tenant testified that his children suffer from various medical and behavioral issues causing them to yell or bang on floor and walls and that he is dealing with it as best he can. The Tenant denied allegations that there is constant noise and fighting in the rental unit or that he has in any way unreasonably disturbed or intimidated the Agent M.M. or any other occupants of the building. While the Tenant acknowledged watching TV on the deck, he stated that it is not excessively loud and that he only watches it there

during reasonable hours. The Tenant testified that it is in fact the Agent M.M. and her relatives in the building, some of whom authored the written complaints before me for consideration, who are harassing and threatening him and that the Agent M.M. had them write these false complaints as she is simply trying to have him evicted for no good cause.

The Agents testified that the Tenant has caused extraordinary damage to the rental unit; however, in the hearing all of the parties agreed that the only damage to the rental unit is one hole approximately one foot high and a little less than one foot wide which the Tenant states occurred when he tripped while carrying his young child. The Agents also stated that the Tenant breached a material term of the tenancy agreement when he moved other occupants into the rental unit three years ago. When asked, the Agents acknowledged that there is nothing in the tenancy agreement stating that he is to be the only occupant of the rental unit or that the number of occupants is a material term of the tenancy agreement. The Agents also agreed that they have not taken issue with the presence of the additional occupants of the rental unit over the past three years and acknowledged that they have not served the Tenant with any written notice that the additional occupants constitute a breach of a material term of the tenancy agreement or a request for him to resolve the issue to avoid termination of the tenancy.

The parties also agreed that rent for use and occupancy of the rental unit has been paid in full for October of 2018.

### Analysis

Based on the evidence and testimony before me for consideration, I find that the Tenant was served the One Month Notice on August 16, 2018, the date he acknowledged receiving it in the hearing.

Section 47 of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- (a) the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;
- (b) the tenant is repeatedly late paying rent;
- (c) there are an unreasonable number of occupants in a rental unit;
- (d) the tenant or a person permitted on the residential property by the tenant has
  - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
  - (iii) put the landlord's property at significant risk;
- (e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
  - (i) has caused or is likely to cause damage to the landlord's property,
  - (ii) 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
  - (iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- (f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;
- (g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) [*obligations to repair and maintain*], within a reasonable time;
- (h) the tenant
  - (i) has failed to comply with a material term, and
  - (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;
- (i) the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 [*assignment and subletting*];
  - (j) the tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property;
- (k) the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;
- (l) the tenant has not complied with an order of the director within 30 days of the later of the following dates:
  - (i) the date the tenant receives the order;
  - (ii) the date specified in the order for the tenant to comply with the order.

The Tenant acknowledged in the hearing that he removes the smoke detector when cooking as it goes off and he does not wish to disturb the other occupants of the building. While I appreciate the Tenant's desire not to disturb others, I find that the removal of the smoke detector for any significant period of time, especially on a regular basis when operating appliances such as the stove, poses a serious fire safety risk not

only to the Tenant, but to the other occupants of the building and the building itself. As a result, I find that the Landlord has satisfied me, on a balance of probabilities, that the Tenant has seriously jeopardized the health or safety of another occupant or the Landlord and put the Landlord's property at significant risk.

Although the Tenant testified that his children suffer from various medical and behavioral issues causing them to yell or bang on floor and walls, ultimately I find that this information amounts to an excuse for why the disturbances are occurring, not evidence that these disturbances have not occurred or cannot reasonably have been expected to disturb other occupants of the building. The Tenant also alleged that the complaints against him are false and that the witness statements are fraudulent; however, he did not provide or point to any documentary or other evidence in support of this testimony. As a result, I find it speculative in nature. In contrast, the Landlord provided compelling evidence in the form of witness testimony from the Agent M.M. and complaint letters from four other occupants of the building that the Tenant or a person permitted on the property by the Tenant, has significantly interfered with or unreasonably disturbed them. As a result, I also find that the Landlord has satisfied me, on a balance of probabilities, that the Tenant or a person permitted on the property by the Tenant, has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property. As a result, I find that the Landlord had cause to serve the One Month Notice and the Tenant's Application seeking cancellation of the One Month Notice is therefore dismissed without leave to reapply.

Although the One Month Notice was served on the basis of several other grounds, as I have already found above that the Tenancy is ended as the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, that the Tenant has seriously jeopardized the health or safety of another occupant or the Landlord, and the Tenant has put the Landlord's property at significant risk; I have not made any findings of fact or law in relation to the other grounds listed on the One Month Notice.

As the Tenant's Application seeking cancellation of the One Month Notice is dismissed, and the One Month Notice complies with section 52 of the *Act*, the Landlord is therefore entitled to an Order of Possession for the rental unit pursuant to section 55 of the *Act*. As the effective date of the One Month Notice has passed and the parties agreed in the hearing that rent for use and occupancy of the rental unit has been paid for October, the Order of Possession will therefore be effective at 1:00 P.M. on October 31, 2018.

Conclusion

The Tenant's Application is dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective at **1:00 P.M. on October 31, 2018**, after service of the Order on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant 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: October 17, 2018

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Residential Tenancy Branch