



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FFT

### Introduction

On October 25, 2018, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting to cancel a One-Month Notice to End Tenancy for Cause, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlord and Tenant attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties agreed that they exchanged the documentary evidence submitted by the Landlord. The Tenant stated that she only submitted a few documents that had been previously exchanged with the Landlord and that were not necessary to admit into or refer to in the hearing.

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.

### Preliminary Matter

Section 63 of the Act allows an Arbitrator to assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision and include an Order. Accordingly, I attempted to assist the parties to resolve this dispute by helping them negotiate terms for a Settlement Agreement with the input from both parties. The parties could not find consensus on the terms of a Settlement Agreement; therefore, the following testimony and evidence was heard, and a Decision made by myself (the Arbitrator).

### Issues to be Decided

Should the One-Month Notice to End Tenancy for Cause, dated October 21, 2018 (the "Notice"), be cancelled, in accordance with Section 47 of the Act?

If the Notice is not cancelled, should the Landlord receive an Order of Possession, in accordance with Section 55 of the Act?

Should the Tenant be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

### Background and Evidence

The Landlord and the Tenant agreed on the following terms of the tenancy:

The one-year, fixed term tenancy began on August 1, 2010 and continued on as a month-to-month tenancy after July 2011. The monthly rent is \$885.00, and the Landlord collected a \$425.00 security deposit and a \$200.00 pet damage deposit. The Tenancy Agreement included terms about the Tenant's responsibility to maintain the rental unit and property in good condition. The Tenant signed the Tenancy Agreement.

The Landlord stated that there have been ongoing issues with the Tenant regarding the cleanliness of the rental unit; however, over the last year, it has become worse.

On August 4, 2017, the Landlord received a complaint from the upstairs tenant in the rental property complaining about the smell of the Tenant's cat litter box. The Landlord followed up in writing with the Tenant about maintaining sanitary standards throughout the rental unit.

In early November 2017, the Landlord conducted an inspection of the rental unit with the Tenant and noted strong smells of cat excrement, bags of recycling throughout the unit, that the patio was littered with bags of recycling and that the carpet was extremely dirty and stained. On November 12, 2017, the Landlord provided a written warning for the Tenant to address the smells, the carpets and the clean up in order to maintain egress throughout the rental unit. The Landlord stated that the Tenant did clean up the rental unit and that all was in order when the Landlord followed-up.

On May 15, 2018, the Landlord attended the Tenant's rental unit to conduct an inspection and noted that the carpets had not been cleaned for several months and that they were stained and odorous; that the hallways were cluttered, and that the patio was littered with garbage and recycling. The Landlord submitted photos and a copy of a

letter, dated May 16, 2018, that she gave to the Tenant to address the issues within thirty days.

The Landlord testified that she attended the rental unit on June 20, 2018 and noted that there were still items spilling out of the closet and into the hallway that were interfering with egress and that the carpet still smelled and was badly stained.

On June 25, 2018, the Landlord issued the Tenant a One-Month Notice to End Tenancy as she had not addressed the issues set out in the warning letter of May 16, 2018. The Tenant responded by making a good effort to clean the rental unit by tidying up, removing many items and by cleaning the carpets. As a result, the Landlord cancelled the One-Month Notice to End Tenancy.

The Landlord stated that another inspection was conducted on September 19, 2018 and in the subsequent letter to the Tenant, the Landlord indicated that there were excessive items stored on the patio; that there was dirt, mold and mildew accumulating due to the storage of items under the stairs; and, that the screen door needed to be put back on the doorway. The Landlord requested the Tenant to clean up the area within 30 days or that her tenancy may be at risk.

The Landlord attended the rental unit on October 19, 2018 and noted that the issues had not been addressed by the Tenant. The Landlord issued the Notice, dated October 21, 2018. The Notice contained a move-out date of November 30, 2018 and advised the Tenant that the Notice was issued as she had breached a material term of the Tenancy Agreement.

The Landlord stated that she is willing to provide the Tenant time to find a new place to live if an Order of Possession is granted.

The Tenant testified that she had been neglectful and failed to meet some of the deadlines as noted by the Landlord. The Tenant apologized for the head-aches she has caused and that she had been struggling to accomplish the clean-up as requested. The Tenant stated that she has cleaned up the areas as requested and did not feel as if the items in her hallway were blocking the exits. The Tenant stated that she has been dealing with some mental and physical issues over the last year and is feeling better and is able to address the Landlord's concerns.

The Tenant stated that she would like the tenancy to continue and is ready to properly take care of her rental unit.

## Analysis

The Landlord served the Notice on the Tenant based on Section 47(1)(h) of the Act that states that the Tenant has failed to comply with a material term and has not corrected the situation within a reasonable time after the Landlord has given written notice to do so.

The Landlord referenced the Tenancy Agreement that stated that the Tenant has failed to abide by Term #12 of the Tenancy Agreement that states in part; the Tenant “agrees to keep the premises and all items in good order and good condition”. The Landlord has also referred to Section 32(3) of the Act regarding the Tenant’s responsibility to repair and maintain the rental unit and to repair damage within a reasonable time.

I find that the Landlord established that her standard of cleanliness, storage of items and condition of the apartment was a material term early on in the tenancy and was reinforced through verbal and written communications to the Tenant over the last year.

I accept the Landlord’s testimony that she has attempted to work with the Tenant over the last year and found that it was a struggle to have the Tenant maintain a level of cleanliness and order that did not; affect the safety of the occupants, the enjoyment of the rental premises by all occupants, or, cause damage to the property.

I accept the Tenant’s testimony that she has been attempting to maintain a standard that does not affect the enjoyment of her neighbours and the Landlord; and, that she has struggled to do so on a consistent basis.

I accept the Landlord’s undisputed evidence that the Tenant has breached a material term on several occasions and has not corrected the situation within a reasonable time after the Landlord has given written notice to do so. I find that the Tenant has breached her Tenancy Agreement and Section 32 of the Act and that the Landlord has issued the Notice based on valid reasons. Based on the testimony and evidence, I find that the TT failed to provide sufficient evidence to prove that the Notice should be cancelled; therefore, I dismiss the Tenant’s Application without leave to reapply.

Section 55 of the Act requires that when a Tenant submits an Application for Dispute Resolution 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 the Act.

I find that the Landlord is entitled to an Order of Possession for the rental unit, in accordance with Section 55 of the Act.

I find that the Tenant was unsuccessful in her Application; therefore, I do not award compensation for the filing fee.

Conclusion

Pursuant to Section 55 of the Act, I grant the Landlord an Order of Possession to be effective on February 28, 2019, at 1:00 p.m. This Order should be served on the Tenant 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: December 04, 2018

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Residential Tenancy Branch