



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

Tenant: CNC MNDC FF

Landlord: OPC MND MNDC MNSD FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on January 14, 2019.

Both parties attended the hearing and provided testimony. The Landlord was represented by counsel, collectively referred to as the “Landlord”. Both parties confirmed receipt of each other’s application packages and evidence. Neither party took issue with the service of these documents and both parties were ready to proceed.

Both parties were provided the 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.

### Preliminary and Procedural Matters

Both parties applied for multiple remedies under the *Residential Tenancy Act* (the “Act”), some of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues before me deal with whether or not the tenancy is

ending. As a result, I exercised my discretion to dismiss, with leave to reapply, all of the grounds on both applications with the exception of the following ground:

- to cancel a 1 Month Notice to End Tenancy for Cause (the “Notice”).

Further, since the Landlord’s application for an order of possession based on this Notice is related, it will also be considered in this decision.

### Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord’s Notice cancelled?
  - If not, is the Landlord entitled to an Order of Possession?

### Background and Evidence

The Tenant acknowledged receiving the Notice on November 30, 2018. The Notice indicates the following reasons for ending the tenancy on the second page:

1. Tenant has allowed an unreasonable number of occupants in the unit/site.
2. Tenant or a person permitted on the property by the tenant has:
  - put the landlord's property at significant risk.
3. 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.
4. Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.
5. Tenant has not done required repairs of damage to the unit/site.
6. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Landlord issued the Notice for several reasons. However, in this review, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine whether there are sufficient grounds to end the tenancy. In other words, my decision will focus on the second ground identified by the Landlord, as this ground is what my decision hinges upon.

The Landlord testified that the Tenant has lived at the rental unit for several years now, but recently the relationship has gone sideways, and has become contentious. The

Landlord stated that the main issue that has arisen in the last few months is due to a pool that was installed in the Tenant's back yard. The Landlord spoke to some issues with extra guests/occupants but was mainly concerned with the Tenant's installation of a pool and the risk the posed to his property.

The Landlord stated that he lives next door to the Tenant, and he noticed the Tenant installed a very large pool (measuring approximately 32 feet x 16 feet x 4 feet high). The Landlord stated that the Tenant never obtained permission to install this pool, and when he noticed it, he asked for it to be removed. The Landlord also stated that the city requires a permit for such a large pool, and one was never obtained. The Landlord stated that the pool was constructed in May of 2018, and it took him a while to figure out what was going on, because the Tenant initially denied that they were building a pool. The Landlord stated that he asked the Tenant to remove the pool because it was damaging the yard, and was a major floor risk. However, the Tenant did not take the pool down until around November 2018.

The Tenant stated that she built the pool sometime around May 2018, and she realized after this (in June) that she needed a permit to build something so large. As per the photos provided into evidence, there was a large freestanding deck overlooking the above ground pool in the back yard. The Tenant stated that she checked with the city in June 2018, and they told her that the permit would not be approved because the back yard was not up to code. The Tenant stated that she knew she was supposed to take the pool down at this point, but stated she did not remove the pool until late 2018. The Tenant stated that she has since fixed the yard, replanted the grass, and removed the pool/deck.

### Analysis

In this review, I will not attempt to resolve all evidentiary conflicts, and will focus on evidence and testimony as it relates directly to my findings with respect to whether there are sufficient grounds to end the tenancy.

In the matter before me, the Landlord has the onus to prove that the reasons in the Notice are valid.

The Landlord entered into written evidence a copy of the Notice. The second issue the Landlord identified on this Notice was:

1. *Tenant or a person permitted on the property by the tenant has:*
  - *put the landlord's property at significant risk.*

I turn to the issue with the pool. I note the Tenant installed a large pool without permission from the Landlord, and without a permit from the city. I can appreciate the Tenant did not know she was in violation of city bylaws at the time she constructed the pool in early 2018 (around May). However, I note she became aware in June 2018, that she had built an illegal an unpermitted deck and pool, yet she did not take any steps to remove the pool until several months later, after getting formal complaints from the Landlord and after consulting with the city. It is not clear why the Tenant waited around 5 months to take down a pool that she knew was in violation of bylaws.

I note that these types of rules and bylaws are often put in place to protect the health and safety of occupants and neighbours. Although I find it was an honest mistake to find out after construction that the pool she built contravened city bylaws, I find significant delay and lack of effort to remove the pool until many months later placed the Landlord's property at significant risk. I note this is a sizable pool, with a moderate sized deck. Any accident, following an unpermitted installation of this type of pool could have been legally and financially costly for the Tenant and the Landlord. I find there was a significant and elevated flood risk, with such a large quantity of water installed, illegally, in the middle of the back yard, relatively close to one or more houses.

I find the Tenant's installation of the pool, and her failure to remove it in a timely manner put the Landlord's property at significant risk and I find the Landlord has sufficient cause to issue the Notice. The Tenant's application to cancel the Notice is dismissed. The tenancy is ending, under the Notice, as described below.

Given my findings on this matter, it is not necessary to consider the other grounds listed on the Notice.

Under section 55 of the *Act*, when a tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the landlord an order of possession. Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

I find that the Notice complies with the requirements of form and content. I find the Landlord is entitled to an order of possession effective **January 31, 2019, at 1pm** after service on the Tenant.

Conclusion

The Tenants' application to cancel the Notice is dismissed.

The Landlord is granted an order of possession effective **January 31, 2019, at 1pm** after service on the Tenants. If the Tenants fail to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and be 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: January 15, 2019

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Residential Tenancy Branch