



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OLC

### Introduction

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

- An order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62; and
- Cancellation of the landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to section 47.

The landlord did not personally appear at the hearing, however, neighbour, AP, appeared on behalf of the landlord. The tenant appeared and he was represented by his advocate, SW. All parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that he served his Notice of Hearing and Application for Dispute Resolution with his evidence package on the landlord by Canada Post registered mail on December 13, 2018. The tenant provided the Canada Post tracking number. Pursuant to sections 88, 89 & 90 of the Act, I find that the landlord was timely served with the Notice of Hearing and Application for Dispute Resolution and tenant's evidence package five days later, on December 18, 2018.

The landlord testified that they posted the Month Notice on tenant's door on December 4, 2018. The tenant acknowledged receiving the One Month Notice on his door. The landlord submitted his evidence to the Residential Tenancy Branch on December 21, 2018. However, the landlord did not provide a proof of service for the delivery of his evidence package. Furthermore, the landlord did not provide any testimony to establish that the evidence was sent to the tenant. The tenant stated that he did not receive any

evidence from the landlord and the tenant objected to the admission of the landlord's evidence.

The landlord is required to serve his evidence on the tenant. RTB Rules of Procedure 3.15 states that "The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and ... the respondent's evidence must be received by the applicant ... not less than seven days before the hearing."

In addition, the landlord must be able to prove that the evidence was served on the tenant. RTB Rules of Procedure 3.16 state that "...the respondent must be prepared to demonstrate to the satisfaction of the arbitrator that each applicant was served with all their evidence as required by the Act and these Rules of Procedure."

In this matter, I am not satisfied that the landlord has served his evidence on the tenant. The landlord did not produce any evidence to prove that he served the tenant with his evidence and the tenant testified that he did not receive the evidence. I find that the tenant would be unreasonably prejudiced if he was required to respond to evidence which he had not had an opportunity to review. Accordingly, I exclude the landlord's evidence from this hearing.

#### Preliminary Issue: Name Correction

The tenant testified that an incorrect last name was inadvertently stated on his application for dispute resolution. Pursuant to 64(3)(c) of the *Act*, I hereby amend this application to state the correct name of the tenant.

#### Preliminary Issue: Severance of A Portion of Tenant's Application

RTB Rules of Procedure 2.3 state, "Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply."

It is my determination that the priority claim regarding the One Month Notice and the continuation of this tenancy are not sufficiently related to the tenant's other claim for an order for the landlord to comply with the *Act*, regulation and/or the tenancy agreement to warrant that they be heard together. The parties were given a priority hearing to address the question of the validity of the One Month Notice.

The tenant's other claim is unrelated in that it does not pertain to facts relevant to the grounds for ending this tenancy as set out in the One Month Notice. I exercise my discretion to dismiss all of the tenant's claims with leave to reapply except for the cancellation of the One Month Notice.

#### Preliminary Issue: Request for Adjournment

Approximately 55 minutes into the hearing, the tenant requested an adjournment for medical reasons. The tenant produced a note from a medical doctor which stated that the tenant "...is dealing with some urgent medical issues which will take up a lot of his time. As such, he should be granted at least a 30 day extension on his eviction hearing. This will be reassessed in a month." The medical note did not provide any other details or medical explanation of the tenant's inability to participate in the hearing.

The tenant testified that he had multiple medical conditions which required ongoing treatment. The tenant also testified that he was taking multiple prescription medications which affected his ability to testify.

I asked the landlord for his position regarding the tenant's request for an adjournment. The landlord opposed the adjournment request. However, the landlord agreed that, if an order of possession is granted, the order for possession should be effective thirty days after the service on the tenant.

A party may request an adjournment of a hearing pursuant to RTB Rules of Procedure 7.8. The factors I need to consider in evaluating a request for an adjournment are set forth in RTB Rules of Procedure 7.9 as follows:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

The tenant's oral submissions did not satisfy me that an adjournment was medically required. The medical note provided no explanation as to why the tenant was medically necessary. The medical note did not explain why the tenant's medical issues prevented him from fully participating in the telephonic hearing.

I also was not satisfied by the tenant's oral submissions. The tenant made the request for an adjournment 55 minutes into the hearing. At the time the adjournment request was made, the hearing was almost concluded. The tenant did not provide any explanation as to why he was medically able to participate in the hearing for the first 55 minutes but he was medically unable to complete the hearing. Furthermore, during the hearing the tenant appeared to understand questions asked of him and he provided coherent responses.

In addition, I am suspicious of the sincerity of the tenant's request for an adjournment. I could hear someone on the teleconference whispering instructions to the tenant which sounded like someone was coaching the tenant's testimony. I could hear someone telling the tenant to testify that he was unable to provide testimony because of the effect of his medications. I checked the audio console and I did not see anyone on the conference call other than the landlord's representative and the tenant. I asked the tenant if anyone else was there and he said there was not anyone else present other than the tenant's advocate. The tenant's advocate said that he was not coaching the tenant and that there was no one else present. Although I was unable to find the source of the whispering, I find that the tenant's testimony has been tainted by apparent coaching. As such, I am not satisfied that the tenant has provided credible medical reasons for an adjournment.

Furthermore, there was no evidence presented to establish that an adjournment would increase the likelihood that this matter could be resolved. In addition, an adjournment was not necessary to give the tenant a fair opportunity to be heard as the tenant had already provided his testimony by the time he made his request for an adjournment. Also, I found that an adjournment could prejudice the landlord. The One Month Notice is based upon landlord's contention that the tenant has endangered the building and its occupants by leaving his gas stove unattended. The landlord could be severely prejudiced if the property is endangered while this matter is adjourned.

For the above reasons, I found that an adjournment was not warranted and I denied the tenant's request for an adjournment.

#### Issue(s) to be Decided

Can the tenant cancel the landlord's One Month Notice? If not, is the landlord entitled to an order for possession?

### Background and Evidence

The tenant testified that he has been living in the rental unit for four years on a month-to-month tenancy. The tenant testified that the monthly rent is \$500.00 and he paid a \$500.00 security deposit at the outset of the tenancy, which the landlord continues to hold.

The landlord's representative testified that the rental unit was a 200 square foot room.

The landlord's representative testified that he witnessed the landlord post the One Month Notice on tenant's door on December 4, 2018. The One Month Notice stated that the reasons for ending the tenancy were that the tenant had seriously jeopardized the health or safety or lawful right of another occupant or the landlord and the tenant had put the landlord's property at significant risk.

The One Month Notice stated the following in support of the notice to end tenancy:

Tenant left stove unattended approximately 6 months ago and on Dec. 3, 2018. Firefighters responded to the scene in the first occurrence. In both instances, smoke engulfed the property. Other tenants residing in the building may vouch for the incident.

The One Month Notice stated an effective vacancy date of January 31, 2019. The tenant provided a copy of the One Month Notice as evidence.

The landlord's representative testified that an incident occurred at the rental unit on October 21, 2016. The landlord's representative testified that the fire department was called because smoke was coming from the rental unit. The tenant testified that the fire department arrived and shut the gas off. The landlord's representative testified that the fire department was about to break down the tenant's door with a fire axe when the landlord arrived with a key to open the tenant's door.

The rental unit was full of smoke and a pot of food was smoldering on the gas stovetop. The tenant was not in the rental unit. The landlord's representative left a note on the tenant's door advising the tenant of the fire and notifying him that this incident caused a significant danger to the building.

The landlord's representative testified that a second incident occurred on December 3, 2018. The landlord's representative testified that he heard the fire alarm go off in the tenant's apartment. He testified that he went to the tenant's door and he could smell smoke. The landlord's representative testified that he entered the rental unit with a key and he found the room full of smoke. The landlord's representative testified that the gas burner on the stovetop was turned on and a pot of charred stew was smoldering. The landlord's representative testified that he turned the stove off and took the pot off the burner. The landlord's representative left a note on the tenant's door notifying him of the incident.

The landlord also had a witness, JP, who testified that he also witnessed the smoke from the rental unit occurring on both October 2016 and December 3, 2018. In both incidents, JP testified that the rental unit was full of smoke.

The tenant acknowledged that the October 2016 incident had occurred. The tenant testified that he was not home when the incident occurred. The tenant testified that he had left a pot of stew on the stovetop and he had left the rental unit for approximately two hours when the incident occurred.

The tenant also acknowledged that smoke accumulated in his rental unit again on December 3, 2018. The tenant testified that he again left a pot of stew on the stovetop while he was out of the rental unit for approximately three hours.

The tenant did not provide an explanation for the incident. However, the tenant characterized this as a minor incident. The tenant produced a photograph of the stovetop which showed the pot and the stovetop in a very clean condition. There was no evidence of fire damage in the photograph. The tenant testified that this incident was not a serious fire risk.

The tenant testified that he believes that the landlord is attempting to evict him in retaliation because the tenant had previously complained about the lack of fire safety devices in the rental unit. The tenant testified that when he moved into the rental unit, there were no smoke alarms and the fire extinguisher was undersized. The tenant testified that the landlord installed smoke alarms in the rental unit in 2014.

### Analysis

The landlord's One Month Notice claimed the following basis for ending the tenancy for cause: (i) the tenant had seriously jeopardized the health or safety or lawful right of another occupant or the landlord and (ii) the tenant had put the landlord's property at significant risk.

I find that the tenant's conduct of leaving food cooking on his gas stovetop unattended while the tenant was not in the rental unit for hours was potentially very dangerous as this conduct created a substantial risk of a fire in the rental unit. Furthermore, I find that the creation of a fire risk seriously jeopardizes the safety of other residents in the building and puts the landlord's property at significant risk. I find that a fire incident that is extensive enough to warrant a fire department response is a significant fire risk.

Although the tenant attempted to minimize the danger of these incidents, the tenant provided no explanation for why he left the gas stove unattended for hours.

The tenant suggested that he could get a care assistant to provide cooking services so that this would not occur again. However, taking preventative measures to avoid future incidents is not relevant to a determination of whether the tenant has already seriously jeopardized the safety of another occupant or put the landlord's property at significant risk. As stated above, I find that tenant's conduct has already seriously jeopardized the safety of another occupant and put the landlord's property at significant risk. Even if the tenant could prevent future incidents, this would not invalidate the one Month Notice based on the tenant's past conduct of leaving food cooking on his gas stovetop unattended while the tenant was not in the rental unit for hours.

I accordingly deny the tenant's request to cancel the One Month Notice.

I find the form and content of the One Month Notice complies with section 52 of the *Act*. Accordingly, pursuant to section 55 of the *Act*, I find that the landlord is entitled to an order of possession. Based upon the agreement of the landlord, the order for possession shall be effective thirty days after service of the order.

### Conclusion

I deny the tenant's request to cancel the One Month Notice.

I grant an Order of Possession to the landlord effective **thirty days after service of this Order** on the tenant. This order must be served on the tenant. 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: January 31, 2019

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Residential Tenancy Branch