



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **CNC RP**

### 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 ("Notice") pursuant to section 47; and
- an order to the landlord to make regular repairs to the rental unit pursuant to section 32.

The tenant appeared, represented by her advocate, CH. The landlord appeared represented by property manager, JB. As both parties were in attendance, service of documents was confirmed. The tenant confirmed receipt of the landlord's Notice and the landlord's evidence. The landlord confirmed receipt of the tenant's application for dispute resolution and evidence. Based on the testimonies of the parties, I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here.

### Preliminary Matter- Additional Evidence

On January 30, 2019, one day before the hearing, the tenant submitted further photographic evidence to the Residential Tenancy Branch.

Residential Tenancy Branch Rules of Procedure (“Rules”) 3.14 states:

Documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office **not less than 14 days before the hearing** (emphasis added).

In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the arbitrator will apply Rule 3.17.

In accordance with rule 3.17, I considered whether this was new and relevant evidence unavailable at the time the application was made or when the tenant served and submitted their original evidence. I determined the acceptance of the additional evidence would unreasonably prejudice the landlord and result in a breach of the principles of natural justice for the reasons set out below.

The landlord was supplied with black and white faxed copies of the photographs the night before this hearing, while I was supplied with colour scanned copies. I considered that the landlord was not given the opportunity to properly review the additional evidence and this would put the landlord at a disadvantage. Subsequently, I disallowed its introduction in accordance with rules 3.14 and 3.17 of the Rules.

#### Preliminary Matter – Severing issue of repairs to the rental unit

Rule 6.2 of The Residential Tenancy Act Rules of Procedure allow an arbitrator to decline to hear or dismiss unrelated issues if the arbitrator determines the issues are unrelated. I have determined that the tenant’s application to make repairs is unrelated to the cancelling of the Notice and I dismiss this portion of the application. If the tenant is successful in cancelling the Notice, leave would be granted to reapply for this relief.

#### Issue(s) to be Decided

Should the landlord’s 1 Month Notice to End Tenancy for Cause be cancelled?

#### Background and Evidence

The parties agree the tenancy began on January 1, 1979 and it is unknown whether a security deposit was collected at that time. Rent is currently set at \$936.00 per month payable on the first day of each month and the tenant is current with rent payment.

On December 6, 2018, the landlord served the tenant with One Month Notice to End Tenancy by posting it to the tenant’s door the same day. The tenant acknowledges

receipt of the Notice, a copy of which was submitted as evidence. Reasons listed for ending the tenancy are:

Tenant or a person permitted on the property by the tenant has:

- Significantly interfered 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

Under "details of causes" the landlord has written:

'Tenants unit has been entered into repeatedly to address a significant rodent issue and today refused entry to the pest inspector. Issues of hoarding and safety concerns have been consistent with ample notices and opportunities to address the issue starting from notices and walkthroughs dating back to August 2018.'

The landlord maintains that the tenant is not addressing the clutter that has accumulated in the rental unit. The landlord provided letters dated August 9, 2018, September 4, 2018, September 13, 2018, September 21, 2018 and October 1, 2018 advising the tenant that she needed to address the accumulation of stuff, or potentially be served with a Notice to End Tenancy.

The landlord testified that the building has a problem with rodents which the landlord attributes to the tenant and her accumulation of stuff. The landlord is actively trying to deal with the rodent issue, but it is difficult for pest control staff to enter the tenant's suite because it does not meet health and safety standards. The mass of materials the tenant has collected is both a fire risk and a health hazard to other tenants in the building because the tenant's belongings are a breeding ground for mice. Furthermore, the tenant keeps overgrown plants both inside and outside the rental unit and leaves the windows open between the two, leading to a greater chance of rodents coming into the building. Photographs of the open windows and plants were submitted as evidence.

The landlord also provided photographs of the inspection of the rental unit taken on November 19, 2018 to support his reasons for ending the tenancy. The landlord says the photos depict a dangerous situation where the piles of stuff don't allow the pest controllers safe access the unit to lay down traps or inspect for rodents.

The report from the pest controller dated November 19, 2018 states:

There is still limited access to this suite. [pest controller] must be able to inspect all corners of this unit. [pest controller] cannot eliminate mice in this unit if clutter persists. Holes in walls seen created by mice but [pest controller] cannot access. 3 mice caught here today.

The landlord's witness, the pest controller, testified that he was unable to inspect the baseboards and place traps where rodents could hide. The traps he did place in the tenant's unit were moved around and collected into piles by the tenant, making them ineffective. The landlord's witness testified that the source of the rodents in the building was "absolutely" the tenant's unit. The rodent issue will continue and will not be eradicated if traps are moved around and the problem will spread to other units unless its eliminated at its source. The tenant did not question the witness when given the opportunity.

The tenant testified that other tenants in the building are suffering from the same rodent infestation and she is not alone in having this problem. As proof, the tenant has provided a list signed by other residents attesting to their rodent problem. Regarding the issue of not allowing the pest controller access to her suite, the tenant argues that she allows access when given proper notice, but the landlord doesn't always give it. The day before being served with the Notice, she refused access to the pest controller but did so because she was not given proper notice, and for this reason she was evicted.

The tenant testified that her place is clean now, like new. She has provided photographs taken after receiving the Notice showing a more organized rental unit with less piles of clutter around. She has hired a person to come in and assist her in making her place clean, costing her lots of money. It is safe for inspection and the floors are now visible. The tenant believes the holes in the walls where her plumbing comes in are the source of the mice and that it's possible the mice get into her suite through these holes.

### Analysis

As the tenant has acknowledged receiving the Notice that was posted to the door on December 6, 2018, in accordance with section 88 of the *Act*, I find that the tenant was duly served with the Notice on December 6, 2018.

Section 47 of the *Act* provides that upon receipt of a Notice to end tenancy for cause, the tenant may, within ten days, dispute the Notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the Notice. Here, the landlord must demonstrate that the tenant has done any or all of the following:

- Significantly interfered 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.

In this case, the landlord has shown that on a balance of probabilities, it is likely that the cause of the rodent problem in the building is the tenant's cluttered rental unit. I find the landlord's evidence, which was verified with photographs and eyewitness testimony, to be compelling and supports the landlord's claim that the tenant is seriously jeopardizing the health or safety of the other occupants of the building by contributing to the rodent problem. The tenant's own evidence that others in the building also have rodents does not mean that the tenant is not the cause of the problem; this evidence could be used to bolster the landlord's claim that the tenant is jeopardizing the other occupants by allowing the rodents to infiltrate the building or to breed.

The tenant was unable to provide any evidence to disprove the landlord's claim and the testimony by the pest controller was not challenged. The tenant's claim that the Notice was issued because she denied access to the pest controller is refuted by multiple letters issued by the landlord regarding the unsafe conditions in her unit. The photographs taken after the Notice was given, showing a tidier rental unit do not convince me that the landlord did not have cause to issue the Notice on December 6, 2018.

I find that prior to receiving the Notice, the tenant was given ample opportunity to address the landlord's concerns about her accumulation of stuff and enabling the pest controller to have access to the unit. While the tenant may have taken steps to clean up her unit, the landlord has proven that the tenancy should end for the reason stated on the Notice and I issue an Order of Possession to the landlord.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenant or anyone on the premises 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: February 06, 2019

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Residential Tenancy Branch