



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding FIRSTSERVICE RESIDENTIAL BC LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”).

The Tenant was present for the teleconference hearing as were two agents for the Landlord (the “Landlords”). The Landlords confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenant’s evidence. The Tenant confirmed receipt of the Landlord’s evidence. Neither party brought up any issues regarding service.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party. Neither party called any witnesses.

### Issues to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled?

If the One Month Notice to End Tenancy for Cause is upheld, is the Landlord entitled to an Order of Possession?

### Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The parties were in agreement as to the details of the tenancy which were also confirmed by the tenancy agreement submitted into evidence. The tenancy began on January 1, 2019. Rent in the amount of \$975.00 is due on the first day of each month. A security deposit and a pet damage deposit of \$487.50 each were paid at the outset of the tenancy.

The Landlords testified that a One Month Notice was served to the Tenant by posting the notice on her door on May 1, 2019. The One Month Notice was submitted as evidence and states the following as the reasons for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has:
  - Significantly interfered with or unreasonably disturbed another occupant or the landlord
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

Further details were provided on the One Month Notice as follows:

*Tenant has used foul language towards other tenants and has constantly harassed and has been abusive towards the landlord. Tenant has filled her suite beyond capacity and refuses to comply with numerous requests to remove 50% of the items from the suite. Tenant has left piles of rubbish outside the main gate of the building. Tenant has taken without permission an additional 6 storage lockers.*

The Landlords testified that the Tenant was aware of the small size of the rental unit prior to moving in. However, they stated that on January 14, 2019 they attended the rental unit for an inspection and noted that the unit was cluttered with belongings, causing concern for safety. They stated that there were accessibility issues entering the rental unit and entering the bathroom which was also full of belongings. Due to this the Landlords stated that they provided a letter to the Tenant advising her to tidy up the rental unit.

The letter, dated January 17, 2019, was submitted which states in part the following:

*After viewing your suite, I am very concerned about the volume of personal belongings, boxes, furniture, clothing etc. you currently have throughout every area of your suite. Your washroom should never be used as a storage locker, and showers are not meant to be used as a closet. There must be clear and*

*open pathways throughout your suite and you may not store boxes from the floor to the ceiling.*

The Landlords testified that they followed up with a visit to the Tenant's unit in March 2019 and noted that there were even more belongings throughout the rental unit. On March 29, 2019 the Landlords stated that a full truck arrived with more of the Tenant's belongings and she told them that she was storing items for her daughter. They advised the Tenant that she was not following the process for booking the elevator and that her unit would not fit the number of items being brought into the rental unit.

The Landlords stated that on April 24, 2019 a large storage container was dropped off near the front of the building with more of the Tenant's belongings in it. They stated their concern for the disturbance to others as this was blocking access to the entrance to the building as well as access for moving trucks arriving as new tenants were moving in. They stated that the Tenant was not provided permission to have the storage container on the premises.

The Landlords noted that at one point the Tenant had a power cord from the building connected to the storage container and that broken furniture was throughout the entrance to the building. They also stated that the Tenant was selling some of the furniture to other occupants on the residential property.

The Landlords further testified that the Tenant took over six storage lockers without permission. They noted that some of the storage lockers were empty but had been assigned to new tenants that were moving in. They stated that when confronted the Tenant refused to move her items from the lockers, although the items have since been removed.

The Landlords submitted photos of items shown on the curb including boxes and furniture. They also submitted photos of the storage container and photos of the storage lockers. The Landlords stated that they were aware it was the Tenant's belongings in the storage lockers as the boxes had her name on them. They also submitted a copy of text messages dated May 9, 2019 in which they advised the Tenant to move the excess items from her unit as well as empty the items from the storage units which do not belong to her.

Regarding the breach of a material term of the tenancy agreement, the Landlords referenced the clauses in the tenancy agreement regarding 'conduct', 'condition inspection' and the pet agreement. They stated that the Tenant has brought her dog into

common areas of the residential property where pets are not allowed such as the laundry room.

The Landlord stated that the Tenant is verbally abusive towards them and other residents in the building.

The Landlord stated that they asked the fire inspector to view the Tenant's unit and the inspector noted that emergency personnel would be unable to access the Tenant's unit in an emergency. They stated that this has led to significant concern regarding the safety of the Tenant and other residents of the residential property. The Landlords stated that the information from the fire inspector was verbal and not put into writing.

The Tenant testified that the Landlords have been sending her letters and threatening her. She stated that she has been trying to downsize her belongings which was difficult after her daughter had an emergency which required the Tenant to temporarily store some of her daughter's belongings. The Tenant stated that she did use some other storage lockers but was provided permission to do so by the residents who had exclusive use of the lockers.

The Tenant submitted a letter dated May 9, 2019 from another resident stating that this resident provided permission for the Tenant to use her locker temporarily, and an undated letter from someone requesting their storage locker back.

The Tenant stated that she had a permit from the city to park the storage container on the street while she was emptying it and noted that this was for a period of approximately 5 days. The Tenant stated that she has been selling or getting rid of many items but was not selling items in the building to other residents. She stated that she put a dresser on the street for free and submitted a photo of it showing that it was damaged while on the street and needed to be disposed of. The Tenant also submitted a photo of her paying money to someone and noted that this was her paying to have the dresser removed after it was damaged. The Tenant further testified that she briefly ran a cord to the storage container to confirm whether a microwave was working before deciding what to do with it.

The Tenant stated that the fire inspector attended her rental unit and did not note any concerns to her. She submitted that the belongings in her unit are not floor to ceiling and that the unit and the bathroom are accessible and safe.

The Tenant stated that the Landlords assumed that she took lockers that were not assigned to her, but she noted that she had permission from the owners. She stated that she was using one without permission but when she told the manager she was provided permission to use the locker for one week before she was able to empty it.

Regarding the Landlord's claim that she is verbally abusive, she stated that she does not use foul language and questioned why there was no evidence from other residents stating that she has been abusive to them.

The Landlords stated that they were willing to provide until July 31, 2019 for the Tenant to move.

### Analysis

The One Month Notice was served to the Tenant on her door on May 1, 2019. As stated in Section 47(4) of the *Act*, a tenant has 10 days in which to dispute a One Month Notice. As the Tenant filed the Application for Dispute Resolution on May 9, 2019 I find that she applied within the 10 days allowable under the *Act*. Therefore, the matter before me is whether the One Month Notice is valid.

As stated by rule 6.6 of the *Residential Tenancy Branch Rules of Procedure*, when a tenant applies to cancel a notice to end tenancy the onus is on the landlord to prove, on a balance of probabilities, that the reasons for the notice are valid. Therefore, in this matter the Landlord has the burden of proof.

The parties were not in agreement as to the issues brought forth by the Landlord on the One Month Notice. When two parties to a dispute resolution proceeding providing conflicting but equally plausible testimony, it is up to the party with the burden of proof to submit sufficient evidence over and above their testimony to establish their claim.

In the absence of photos of the Tenant's rental unit or further documentary evidence that might have established that the Tenant's rental unit is posing a safety issue, such as a letter from the fire inspector, I am not satisfied that the Landlord has proven that there are safety concerns with the amount of belongings in the Tenant's rental unit.

Regarding the locker issue, I again do not find sufficient evidence to establish what occurred. The Landlord submitted photos of the lockers in question, as did the Tenant. The Tenant stated that she had permission to use the lockers of other residents in the

building, other than one locker which the manager provided her permission to use for one week. Both parties agreed that the issue with the lockers has now been resolved.

Regarding the Tenant using foul and abusive language, it does seem that there was some conflict that arose between the parties. However, I do not find sufficient evidence of the Tenant's behaviour as stated by the Landlord such as letters from other residents or incident reports.

Regarding the claims of the Tenant's belongings on the street and in the entrance way to the residential property, as well as the delivery of the storage container on the street, again I find that I do not have sufficient evidence from the Landlord to establish what occurred. Instead, I find that the Tenant provided equally plausible testimony of what occurred and stated that she had items temporarily on the street to dispose of. The Tenant also stated that she had permission from the city to park the storage container on the street temporarily and noted that it was not blocking any access to the building.

While I agree that a large storage container may block some access and cause disturbance to other residents, I find that I do not have enough evidence from the Landlord to establish that the Landlord or other residents were significantly disturbed. This may have included letters from the other residents stated the ways in which the storage container and the Tenant's belongings impacted their access to the building or ability to move into the building. The Tenant's photo appears to show the storage container on the street and not in front of the building.

Regarding the Landlord's claims of a breach of a material term of the tenancy agreement, as stated I am not satisfied that the issues occurred as stated by the Landlord due to opposing testimony from the Tenant and insufficient evidence from the Landlord. Therefore, I find that the Landlord did not establish that there was a breach of a material term of the tenancy agreement. I find that there was insufficient evidence regarding the state of the Tenant's rental unit, the Tenant's conduct or any issues regarding the Tenant's pet.

Therefore, as I am not satisfied that the Landlord met the burden of proof regarding the reasons for the One Month Notice, the Tenant was successful with her application to cancel the notice. The One Month Notice dated May 1, 2019 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the Act.

However, the Tenant should consider herself sufficiently warned regarding the concerns of the Landlord as noted on the One Month Notice and as discussed at the hearing.

Should the Landlord have further issues, they may find cause to serve a new notice to end tenancy.

Conclusion

The One Month Notice dated May 1, 2019 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

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: June 25, 2019

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Residential Tenancy Branch