



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNC, MNDCT, OLC, RP, FFT

### **Introduction:**

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the one month Notice to End Tenancy dated May 27, 2019
- b. An order for a monetary order in the sum of \$28,800.
- c. An order that the landlord comply with the Act, Regulations and/or tenancy agreement.
- d. An order that the landlord reduce rent for repairs, services or facilities agreed upon but not provided.
- e. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Notice to End Tenancy was personally served on the Tenant on May 27, 2019. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on June 14, 2019.

### **Preliminary Matter:**

Rule 2.3 of the Rules of Procedure provide as follows:

#### **2.3 Related issues**

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.

I determined the tenants' claims for a monetary order, an order that the landlord comply with the Act, Regulations and/or tenancy agreement and for an order that the landlord reduce rent for repairs, services or facilities agreed upon but not provided are not related to the Application to Cancel the one month Notice to End Tenancy. As a result I ordered that those claims be dismissed with leave to re-apply. I determined it was appropriate to consider the Tenants' application for an order to cancel the one month Notice to End Tenancy and to recover the cost of the filing fee in this hearing.

With respect to each of the applicant's claims I find as follows:

Issues to be Decided:

The issues to be decided are as follows:

- a. Whether the tenants are entitled to an order cancelling the one month Notice to End Tenancy dated May 27, 2019?
- b. Whether the tenants are entitled to recover the cost of the filing fee?

Background and Evidence:

The tenancy began on May 1, 2006. The present rent is \$1336 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$475 at the start of the tenancy.

Grounds for Termination:

The Notice to End Tenancy relies on the following grounds:

- Tenant or a person permitted on the property by the tenant has:
  - significantly interfered with 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

The Details on the Notice state:

"Tenant has harassed many staff members. Staff are afraid to work because tenant files false police reports against them. Live-in Caretaker is also a tenant and fears for their family and job. Previous staff resigned because of tenant's harassment. Current staff have medical notes for stress & anxiety experienced due to the tenant's relentless harassment. Tenancy is frustrated. Tenant has

interfered with and unreasonably disturbed landlord and staff and put Landlords property at risk. Tenant calls office with threats and fake alias.”

Unfortunately the relationship between the parties has deteriorated. Each views the other with suspicion and sees events through this frame of reference.

I advised the parties that where a tenant has applied to cancel a Notice to End Tenancy I can consider conduct up to and including that date (in this case May 27, 2019). However, conduct after that date may be the subject of another Notice to End Tenancy but cannot be considered in determining the validity of this Notice. Similarly, I cannot consider conduct prior to the service of a previous one month Notice to End Tenancy.

Briefly, the landlord gave the following evidence:

- The landlord testified the tenant has falsely accused one of their staff members of trying to cause them harm by attempting to trip them through the use of a vacuum cleaner cord. The police investigated the incident including the viewing of video footage and determined the incident was an accident. However, the continued conduct of the tenant and the false reporting of the incident has caused extreme anxiety and resulting in the staff member taking a stress leave.
- The incident that led to the serving of the one month Notice to End Tenancy occurred on April 26, 2019. The staff member was vacuuming in the lobby area. The tenants were leaving the elevator. The tenants alleged the landlord's employee intentionally attempted to trip the tenants with the cord of the vacuum cord, reported it to the police and demanded an investigation.
- The police completed an investigation including the viewing of the cct video of the incident. The landlord testified she provided the tenant and the Branch with a copy of this video. The video has not been uploaded to the file. It may be the reason the Branch did not upload it was because the tenant failed to complete the appropriate summary required by the rules.
- The police report of the incident provides that they interviewed the Tenant and the staff member and viewed the cct video and made the following observations:
  - The staff member could be seen in the lobby vacuuming the foyer.
  - The tenants could be seen exiting one of the elevators
  - The staff member glanced at the tenants and continued vacuuming. The tenants walked toward the front door to exit the building.
  - The staff member continued on vacuuming and had his back to them.

- While walking near the vacuum cord, the tenant accidentally had one of his feet step under the cord causing it to rip out the power outlet which caused him to slight trip.
- This action caused his his wife to slightly trip as the cord was raised.
- The staff member turned around and appeared to say something (unknown what was said) and proceeded to plug in the cord.
- The tenants left the building.
- The tenant was advised of the observations on May 1, 2019.
- The officer concluded that nothing criminal took place and no police action was necessary.
- The landlord testified the tenant disputed this decision to the police causing further stress to the staff member.
- On May 1, 2019 the tenants demanded a new fridge resulting in the tenants having to throw out food. The staff member attended and replaced a burned out light bulb. However, there was no evidence of food having thawed and refrozen and that the fridge was working perfectly.
- On May 2, 2019 the staff member submitted a doctor's note requesting a leave of absence from work due to anxiety and stress caused by the conduct of the Tenants.
- On May 7, 2019 the tenant called the head office a total of four times under an alias demanding to speak to the owner and threatening to file a class action lawsuit against the owners of the company and refusing to work with the Property Manager.
- On May 7, 2019 the Property Manager requested a leave of absence from work due to the anxiety and stress caused by the Applicants actions.

Briefly, the tenants gave the following evidence:

- His wife is pregnant expecting their first child. He is very concerned about her health.
- On April 26 2019 the staff member saw them exit the elevator and attempt to trip them. He did not apologize.
- On October 2018 he was the lead tenant in joinder application obtained an order from an arbitrator requiring the landlord to repair the ventilation system and a reduction of rent. The landlord failed to make the appropriate repairs and the problems are ongoing.
- He fractured his ankle on May 18, 2019 and the landlord refused to adjourn the hearing of this matter.

- The tenant submits the actions of the landlord are in retaliation to the actions of the Tenant in obtaining a repair order.
- The tenant referred to an 8 page summary of events. This summary was carefully consider. Much of the events related to matters not relevant to this hearing.
- Tenant Witness #1 testified she witnessed the staff member involved in the vacuuming yelling at the tenant. She no longer lives in the building.

The landlord responded to the ventilation issue by providing evidence from the City of Vancouver which state the landlord has acted with diligence and cooperation in working with contractors, engineers and the city to complete the required work and that the work has been completed to the satisfaction of the City.

Analysis:

After carefully considering all of the evidence and the submissions of both parties I made the following determination.

- The landlord has the burden of proof to establish sufficient cause to end the tenancy on a balance of probabilities based on the evidence presented at the hearing. While an arbitrator can accept second hand hearsay evidence the failure of the witness to testify in person may affect the weight given to the second hand evidence.
- The tenant failed to prove that the staff member attempted to trip the tenant and his wife with the vacuum cord. The observations of the police officer who reviewed the cct video confirms this.
- The tenant failed to prove that the conduct of the various staff member of the landlord are retaliatory. Numerous allegations have been made but the proof presented by the tenant is insufficient.
- Unfortunately the relationship between the parties has deteriorated. Both parties do not trust the other and each sees each event through this lens.

After carefully considering all of the evidence I that the landlord failed to establish sufficient grounds to end the tenancy based on the evidence presented for the following reasons:

- I accept the submission of the Advocate for the Tenant that the reporting of an alleged crime to the police is not sufficient grounds to end a tenancy.
- The police report does not conclude the tenant was lying or that he was acting maliciously. The tenant did not have access to the cct footage before he filed the

report. I determined that the tenant genuinely but wrongly believed the staff member was attempting to harm he and his wife.

- I determined the landlord failed to prove that the request to repair the fridge is grounds to end the tenancy. The Caretaker did not attend the hearing. Her written statement is insufficient to amount grounds to end the tenancy.
- The grounds set out in the Notice to End Tenancy provide as follows:
  - Tenant or a person permitted on the property by the tenant has:
    - significantly interfered with 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
- The landlord failed to establish that the tenant has put the landlord's property at significant risk. The issue is whether the landlord has presented sufficient evidence to prove that the tenant has "significantly interfered with or unreasonably disturbed another occupant or the landlord" or "has seriously jeopardized the health or safety or lawful right of another occupant or the landlord"
- The landlord alleged the tenant is aggressive and abusive to its staff members. However the other staff members failed to testify at the hearing. The Caretaker gave a written statement. However, it is impossible to weigh the significance or unreasonableness of the conduct in the absence of first hand testimony of the staff member. .
- The tenant denies these allegations. The tenant's the emails and messages left with the landlord appear on the face to be courteous and professional and are inconsistent with the allegations of abuse by the landlord.
- The landlord testified that the tenant has used an alias in contacting head office requesting to talk to the owner and alleging that a class action law suit would be brought. There is insufficient proof that the person is the tenant. Further, if there are problems with the rental property and if the landlord is not responding to the concerns of the tenants they have a legal right to bring a joinder file.

I determined the landlord failed to provide sufficient evidence to prove the grounds set out in the Notice to End Tenancy. This decision may very well have been different had the staff members of the landlord been present and testified at the hearing. While I determined the landlord failed to present sufficient evidence to end the tenancy I am troubled by the conduct of the tenant in his interactions with the staff members of the landlord.

Conclusion:

I ordered that the tenants' claims for a monetary order, an order that the landlord comply with the Act, Regulations and/or tenancy agreement and for an order that the landlord reduce rent for repairs, services or facilities agreed upon but not provided be dismissed with leave to reapply.

I determined that the landlord has failed to establish sufficient cause to end the tenancy. As a result I ordered that the one month Notice to End Tenancy dated May 27, 2019 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

I dismissed the Tenant's application to recover the cost of the filing fee as I determined the tenant's conduct has contributed to this matter.

**This decision is final and binding on the parties.**

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: July 23, 2019

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Residential Tenancy Branch