



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, RP

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a One Month Notice to End Tenancy for Cause dated June 26, 2019 ("One Month Notice"), and for an order for ordinary repairs.

The Landlord and an advocate for the Tenant (the "Advocate") appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process.

During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

### Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any orders sent to the appropriate Party.

At the onset of the hearing, the Landlord explained that the repairs have already been made, so there is no need for me to consider this aspect of the Tenant's claim. The

Tenant agreed, so I only considered the Tenant's application to cancel the One Month Notice.

### Issue(s) to be Decided

- Should the One Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?

### Background and Evidence

The Parties agreed that the fixed term tenancy ran from February 15, 2018 to January 31, 2019, and was then month-to-month. The Parties agreed that the Tenant pays a monthly rent of \$700.00, due on the first day of each month, and that the Tenant paid the Landlord a security deposit of \$350.00 and a pet damage deposit of \$350.00.

The Parties agreed that the Landlord served the Tenant with a One Month Notice in person on June 26, 2019, which is the date the Landlord signed the form. The One Month Notice had a vacancy effective date of July 31, 2019. The grounds checked for issuing the One Month Notice were that:

- The tenant or a person permitted on the residential property by the tenant has
  - seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
  - put the landlord's property at significant risk; and
- The tenant or a person permitted on the property by the tenant has
  - caused extraordinary damage to the unit/site or property.

In the hearing, the Landlord said the basis for the eviction notice is that on May 27, 2019, a property manager called her to report a call from another tenant living below the Tenant. The other tenant said that there was water seeping into the lower unit. The Landlord said they called someone from a restoration company to attend and assist in determining the source of the water. She said ultimately, they discovered that the Tenant had left the rental unit with her sink running. It had flooded an area of the rental unit and was running into the unit below.

In the hearing, the Tenant said: "Most of what she said is kind of true. I didn't just take off and leave the water running on purpose. I took a call and left in a hurry. I didn't

realize until I got home that there was a flood. I turned off the tap and used my towels to dry up. When I found out from [the property manager] about it - the devastation that was down there - I felt really bad about that. I'm not a threat to anyone in the building."

The Advocate said that other tenants, N.B. and A.R., have made statements about what a good neighbour the Tenant is. One statement dated July 27, 2019, and signed by A.R. states:

To Whom It May Concern

I [A.R.] have been [the Tenant's] neighbour at [rental unit address] for some time. I have never had an issue with her and she seems to be a great neighbour.

[signed A.R.]

The statement by N.B. says:

To Whom It May Concern

I've never had any issues with [the Tenant] at [rental unit address]. She smokes outside from what I have witnessed and I don't hear much from her. She has been pleasant as a neighbour as of date.

[signed N.B., address]

July 28, 2019

In answer to the Landlord's question about why the Tenant asked her neighbours for these letters, the Tenant said "to show that I am not a hazard."

The Landlord said that she uploaded an undated email she received from N.B., which shows a different perspective on the Tenant:

To Whom It May Concern, during the time when the flood happened and I was notified that they thought it was my place because [the Tenant] said that she was away fishing so it couldn't have been her but later on finding out that I had to stay in a hotel I work at costing me additional money I really couldn't afford because she left the tap on ended up displacing the downstairs tenant as well for quiet some time as well I might add she can be quiet loud at times as well early in the morning/late at night. Everytime she knocks on my door the smell of beer is very strong and always has a lot of empties under the front stairs so maybe drinking may be the problem other then that she has been pleasant as of recent before

that she came across as quiet aggressive I found accusing me of things that were not possible such as going up and down my stairs knocks pictures off her walls.

[N.B., Address]

[reproduced as original]

The Advocate said: "I think we've all left a tap running at some point. To have her be homeless because of that is unrealistic." The Tenant said that "this would never happen again."

In the hearing, the Landlord said:

They're saying this is a one-off, but on the May long weekend, two weeks before this I got a call from a friend of [the Tenant's] quite irate because her light was arcing. I called the property manager and she said [the Tenant] has replaced all the light fixtures on her own. We told her not to touch that and to wait until an electrician comes over. [The Tenant] got a friend of hers from the church who is a handyman. He went over and found out that whoever installed the fan for [the Tenant] did it incorrectly. He repaired and grounded it properly. My concern is that this is not a one-off – it's a behaviour, a disregard for asking permission to do things. Changing thing in the unit and when she does things she doesn't do it properly. The only reason we caught this was because it was sparking and putting everyone at risk, because she wanted to change the lights and put everyone at risk. There was no eviction notice for that; I did it because this is a second issue going to character, responsibility, judgment. She is significantly damaging the property; she is risking the safety of everyone else in the building. What else do we need to prove that this person is not safe in this building?

The Tenant said that this was true, but she said that the property manager "...told me to make the place your own. I told her I wanted to put a ceiling fan in the bedroom."

The Advocate said: "When the Tenant found out that the fan wasn't working properly, she got a professional to fix it on her own accord. That goes to her character."

The Landlord said the Tenant "...did not take responsibility, and no, she didn't hire a professional, she brought in a friend from the church to fix it when I said I will get an electrician to fix it and she will pay for it. That's when she got a friend to do it."

The Advocate said he believes that the person she did get to fix it was an electrician. The Tenant said: "If I had phoned an electrician without her consent, I'd be in trouble for that, too."

The Landlord submitted a statement from the tenant below the rental unit, which states:

To whom it may concern my name is [L.H.] I live at [residential property] with my husband and daughter. On may 25th 2019 at approximately 1pm our apartment was flooded badly from the tenant upstairs me and my husband were in the livingroom when we heard water dripping from our storage room we then opened the storage room door to find water leaking from our ceiling we took video evidence of this and sent it to [C.] the property manager she came to the apartment immediately to assess the damage my husband then proceeded to call his mother to come help us move we have been living at his mothers since may until present this has affected us in such a way that we no longer had our own home to live in and our own food to eat we fear that if she remains as a tenant in this building that this will not only continue but will proceed to get worse

Sincerely

[J.J.A.S & L.E.H.]

[reproduced as original]

The Advocate said that he has "...worked with [the Tenant] for over a month on this; she has a lot of remorse. Her place is always immaculate when I visit. It's the cost of the repair is when the eviction happened."

The Landlord said: "When the eviction notice came is not connected to the cost. The bills for the repair are totally meaningless to me; it's just a deductible."

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Sections 32 of the Act requires a tenant to make repairs for damage that is caused by the action or neglect of the tenant, other persons the tenant permits on the property or the tenant's pets.

Landlords and tenants rights and obligations for repairs are set out in sections 32, which

states:

**Landlord and tenant obligations to repair and maintain**

**32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant **must maintain** reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

...

[emphasis added]

The One Month Notice was issued after the Tenant left the water running when she left the rental unit. I find that this demonstrates negligence on the part of the Tenant, which damaged the residential property and affected the lives of other tenants. I find that this alone is sufficient cause to confirm the One Month Notice. However, combined with the issue of replacing the light fixtures in the rental unit without the Landlord's permission, and without a professional electrician, I find that the Tenant's behaviour has proven to be dangerous to the other tenants and to the Landlord's property. I find this behaviour matches the wording in section 47 of the Act in that it "seriously jeopardized the health or safety or a lawful right or interest of the Landlord and another occupant". This is not a matter of ordinary wear and tear on the part of the Tenant.

Based on the evidence before me, overall, I find that the Landlord has established sufficient cause, pursuant to Section 47 of the Act, to end the tenancy. The Tenant seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, she put the landlord's property at significant risk, and she caused extraordinary damage to the unit/site or property. As a result, the Tenant's Application to cancel the One Month Notice is dismissed.

I also find that the One Month Notice issued by the Landlord complies with section 52 of the Act. Given the above, and pursuant to section 55 of the Act, I find that the Landlord is entitled to an Order of Possession.

Conclusion

The Tenant seriously jeopardized the health, safety, and a lawful right or interest of the landlord or another occupant; she put the landlord's property at significant risk, and she caused extraordinary damage to the unit/site or property. As such, I have confirmed the One Month Notice, and I find that the Landlord is entitled to an order of possession of the rental unit effective on August 31, 2019 at 1:00 p.m.

This order may be filed in the British Columbia Supreme Court and enforced as an order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: August 21, 2019

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Residential Tenancy Branch