



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding COLUMBIAN CENTENNIAL HOUSING  
SOCIETY and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      CNC MT OLC RP

### Introduction

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

- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the "**Notice**") pursuant to section 47;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62; and
- more time to make an application to cancel the Notice pursuant to section 66.

All parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The corporate landlord ("**CC**") was represented by its administrator ("**KB**")

The tenant testified, and the landlords confirmed, that the tenant served the landlord with the notice of dispute resolution form and supporting evidence package. I find that the landlords have been served with the required documents in accordance with the Act.

The landlords testified that the tenant was served with their evidence via registered mail on September 14, 2019. The landlords provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. The tenant testified that she did not receive this evidence. The tenant confirm that it was sent to the rental unit, however, she testified that she had temporarily moved to another location but did not provide the landlords with this address. The notice of application for dispute resolution lists the tenant's address for service as the rental unit.

Section 88 of the Act permits service of evidence by registered mail. Section 90 of the Act states that the documents served by registered mail are deemed to have been served five days after mailing. It does not require that the intended recipient actually retrieve the registered mail from the post office.

I find that the landlords sent their evidence by registered mail to the tenant's address for service. Accordingly, I find that the landlords are deemed to have served their evidence on the tenant on September 19, 2019, five days after its mailing, in accordance with sections 88 and 90 of the Act.

### Preliminary Issue – Severing of Claim

The tenant's claim involves dispute the Notice as well as seeking an order that the landlords comply with the Act and make repairs to the rental unit.

At the hearing I ordered, pursuant to Rule of Procedure 2.3, that the tenants' claim be severed. Rule 2.3 requires that claims in an application be related to each other and provides arbitrators with the discretion to dismiss unrelated claims. I find that the tenants' claim regarding repairs to the rental unit and the landlords' compliance with the Act are not sufficiently related to their claim seeking the cancellation of the Notice.

As such, I order that these portions of the tenant's claim are dismissed, with leave to reapply.

### Issue(s) to be Decided

Is the tenant entitled to:

- 1) an order that the Notice be cancelled;
- 2) an order that she have more time to make an application to cancel the Notice?

### Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written, month-to-month tenancy agreement starting November 1, 2019. Monthly rent is \$543 and is payable on the first of each month. The tenant paid CC a security deposit of \$300 and a pet damage deposit of \$300. CC has

issued a cheque to the tenant for the return of the pet damage deposit, but the tenant has not yet retrieved it from its offices. CC still retains the security deposit.

The tenancy agreement includes a Crime-Free Housing addendum, which reads:

The tenant/s, any occupant of the tenant/s household, and any persons invited onto the residential property or residential premise by the tenant/s or any member of the tenant/s family, shall not engage in any criminal activity on the premises or property including, but not limited to:

- A. Any drug-related criminal activity;
- B. Solicitation (sex trade workers and related nuisance activity)
- C. Street gang activity.
- D. Assault or threatened assault.
- E. Unlawful use of a firearm.
- F. Any criminal activity that threatens the health, safety or welfare of the landlord, other Tenants or persons on the residential property or residential premises.

VIOLETION OF THE ABOVE PROVISIONS WHICH FORM A REASONABLE AND MATERIAL TERM OF THE RESIDENTIAL TENANCY AGREEMENT, SHALL BE GOOD CAUSE FOR A NOTICE TO END A TENANCY.

On July 26, 2019, CC served the Notice on the tenant by posting to her door. The tenant testified she retrieved the Notice from her door that same day.

The Notice indicates an effective move-out date of August 31, 2019.

The grounds to end the tenancy cited in the Notice were:

- 1) the tenant or a person permitted on the property by the tenant has:
  - o significantly interfered with or unreasonably disturbed another occupant or the landlord;
  - o seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
  - o put the landlord's property at significant risk;
- 2) the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to
  - o damage the landlord's property;

- adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant;
- to jeopardize a lawful right or interest of another occupant or the landlord;

The Notice provided further details as to the cause for its issuance:

The Society have received numerous written complaints about Tenant and her boyfriend, who is not a registered tenant, but appears to be living there. [The tenant] has engaged in Criminal Activity with multiple criminal charges laid as per Public Court List, RCMP File [omitted]. [The tenant] had signed a Crime Free Housing Addendum which makes up part of her Tenancy Agreement.

The tenant made an application for dispute resolution on August 1, 2019 to dispute the Notice.

The landlords testified that the tenants' boyfriend had an outstanding warrant for arrest and that he was arrested by the RCMP at the rental unit in February 7, 2019. The landlords called another resident of the rental property as a witness who testified that:

- 1) the boyfriend and the tenant looked as if they were doing drugs;
- 2) they looked like "riff raff";
- 3) the RCMP came to the rental unit to arrest the tenant's boyfriend;
- 4) the tenant's children were taken away from her; and
- 5) the tenant and her boyfriend were both charged with a serious crime that took place in a neighboring city.

The landlords' witness testified that she did not have firsthand-knowledge of any of this, but did provide the landlords with a screenshot of a court docket (which the landlords entered into evidence) which shows that the tenant was charged with an offence under sections 344(1)(a.1) and 355(b) of the Criminal Code of Canada (commit robbery here a firearm is used).

The landlords also allege that the tenant's boyfriend was responsible for breaking into the car of another occupant of the rental property. They submitted into evidence an internal email dated August 26, 2019 (which, I note, is after the date the Notice was issued) in which an employee of CC writes that the tenant's boyfriend's fingerprints were found inside that tenant's car and in that tenant's carport. The email cited a police file number, but no such file was entered into evidence.

The landlords argued that such illegal activity warranted the issuing of the Notice.

Additionally, the landlords testified that the other occupants of the rental property are unreasonably disturbed by the very presence of the tenant's boyfriend at the rental property. They were not able to provide any specific examples of how his present unreasonably disturbed the other tenants, other than the incident of his arrest, and one incident where the tenant's dog escaped the rental unit.

The tenant testified that the incidents which form the basis of the aforementioned charges are alleged to have happened in a neighboring municipality. She also testified that the charges against her have been stayed. She denies that she committed any crime. She testified that her boyfriend is presently in jail. She testified that her children have not been taken away from her.

The tenant argued that any instances of alleged illegality did not occur on the residential property, and as such should not form a basis for ending the tenancy, as per the Crime-Free Housing addendum.

## **Analysis**

### **More Time to Dispute the Notice**

Section 47(4) states:

#### **Landlord's notice: cause**

(4)A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

I find that the Notice was served on the tenant on July 26, 2019. I find that the tenant applied for dispute resolution on August 1, 2019, six days after having received the Notice. As such, I find that the tenant disputed the Notice within the time frame set out at section 47(4).

I therefore dismiss the tenant's application for more time to dispute the Notice, as such an application is not necessary.

### **Validity of Notice**

Sections 47(1)(d) and (e) of the Act state:

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

[...]

(d) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

(iii) put the landlord's property at significant risk;

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(i) has caused or is likely to cause damage to the landlord's property,

(ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

(iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

Rule of Procedure 6.6 states:

#### **6.6 The standard of proof and onus of proof**

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

So, the landlords must prove that it is more likely than not that the tenant's, or someone she permitted on the residential property's, conduct met with the criteria set out in section 47.

Policy Guideline 32 address the issue of illegal activity. It states:

In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the

extent of interference with the quiet enjoyment of other occupants, extent of damage to the landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants.

For example, it may be illegal to smoke and/or consume an illicit drug. However, unless doing so has a significant impact on other occupants or the landlord's property, the mere consumption of the drug would not meet the test of an illegal activity which would justify termination of the tenancy.

[...]

The illegal activity must have some effect on the tenancy. For example, the fact that a tenant may have devised a fraud in the rental unit, written a bad cheque for a car payment, or failed to file a tax return does not create a threat to the other occupants in the residential property or jeopardize the lawful right or interest of the landlord. On the other hand, a methamphetamine laboratory in the rental unit may bring the risk of violence and the risk of fire or explosion and thus may jeopardize the physical safety of other occupants, the landlord, and the residential property.

A tenant may have committed a serious crime such as robbery or physical assault, however, in order for this to be considered an illegal activity which justifies issuance of a Notice to End Tenancy, this crime must have occurred in the rental unit or on the residential property.

If a person permitted in the rental unit or on the residential property engages in an illegal activity, this may be grounds for terminating the tenancy even if the tenant was not involved in the illegal activity. The arbitrator will have to determine whether or not the tenant knew or ought to have known that this person may engage in such illegal activity. The tenant may be found responsible for the illegal activity whether or not the tenant was actually present when the activity occurred, so long as it was in the rental unit or on the residential property.

[emphasis added]

Based on the testimony of the parties, and of the landlord's witness, I am not persuaded that the tenant or her boyfriend engaged in any illegal activities in the rental unit or on the residential property. The bulk of the allegations of the landlords are with regards to

the criminal record of the tenant's boyfriend. No evidence was given that he ever committed illegal activities at the rental unit or on the residential property.

The landlords also rely on the fact that the tenant was charged under the Criminal Code. The tenant testified that the charges have been stayed. Even if this were not the case (which I make no finding on), the alleged crime took place in a different municipality, and had no connection to the rental unit or residential property. As such, it is not proper grounds to end a tenancy.

The landlords alleged that the tenant's boyfriend broke into another resident's car. While such an act may arise to the level which would warrant the issuing of a notice to end tenancy, the landlords provided no evidence that such a robbery took place (police report or witness testimony, for example). In any event, this event appears to have taken place after the Notice was issued and is therefore not a valid basis to uphold the Notice.

I find that the landlords have failed to satisfy me that the tenant has met the requirements of 47(1)(e) as a basis to have issued the Notice.

I also find that they have failed to satisfy me that the tenant has met the requirements of section 47(1)(d) as a basis to issue the Notice. The landlords advanced the argument that the tenant's boyfriend's criminal record was sufficient to satisfy these requirements (as set out in the Act):

- (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
- (iii) put the landlord's property at significant risk;

However, the landlords were not able to refer me to any specific incident where the tenant's boyfriend acted in such a way that as to satisfy any of these requirements. Rather, the landlords' argument is that the tenant's boyfriend's very presence is sufficient to satisfy these requirements. I do not agree with this argument. There is no evidence that his presence:

- significantly interfered or unreasonably disturbed other tenants or the landlord
- seriously jeopardized the health or safety or a lawful right or interest of other tenants or the landlord; or
- put the landlord's property at significant risk.



The existence of the tenant's boyfriend's criminal record is not sufficient evidence to satisfy these requirements. It is not appropriate for me to make assumptions about the tenant's boyfriend's actions based on his criminal record.

I find that the incident where a dog ran loose in the rental property is not a sufficient basis to end the tenancy. Such an incident does not rise to the level of an "unreasonable" disturbance.

Without specific evidence of actual events that would meet the 47(1)(d) requirements, I find that the landlords have failed to satisfy me that the tenant has met the requirements of 47(1)(d) as a basis to have issued the Notice.

As such, I order that the Notice is cancelled. The tenancy shall continue.

The tenant may reapply for an order that that repairs be done and for the landlords to comply with the Act.

I remind the tenant of her obligation to pay monthly rent under the tenancy agreement and section 26 of the Act.

### **Conclusion**

I order that the Notice is cancelled and of no force and effect.

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: October 16, 2019

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Residential Tenancy Branch