



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Westsea Construction Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, OLC, FFT

### Introduction

This hearing was scheduled to deal with a tenant's application to cancel a 1 Month Notice to End Tenancy for Cause and orders for the landlord to comply with the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing, I confirmed the parties had exchanged their respective hearing documents and evidence upon each other and I admitted their documents into evidence without any objection.

I explained the hearing process to the parties and permitted the parties to ask questions.

The tenants confirmed that the only remedy they are seeking is cancellation of the 1 Month Notice and the tenants withdrew their request for orders for compliance.

### Issue(s) to be Decided

1. Should the 1 Month Notice to End Tenancy for Cause be upheld or cancelled?
2. If the 1 Month Notice is upheld, is the landlord entitled to an Order of Possession and if so, when should it take effect?
3. Should the tenants recover the filing fee from the landlord?

### Background and Evidence

The tenancy started on December 1, 2016 and the tenants are currently required to pay rent of \$1,1185.00 on the first day of every month.

On September 1, 2019 the tenant was cooking hardboiled eggs in a pot on the stove top and the tenants left the rental unit at approximately 6:30 p.m. without turning the stove element off. The contents of the pot eventually boiled dry, causing the eggs to explode and burn, which resulted in smoke filling the rental unit and the smoke detector sounding.

At approximately 9:15 p.m. the neighbour to the rental unit notified the building manager of the sound of a smoke detector coming from the rental unit. The building manager went to the rental unit and entered upon smelling smoke. The building manager pulled the fire alarm and called 911. The fire department attended, removed the pot from the stove top, opened the windows and placed fans in the windows of the rental unit, then proceeded to re-set the fire alarm and permitted residents of the building to return to their units.

Shortly afterward, the building manager telephoned the tenant and the tenants returned to the property within a few minutes. The tenants met the building manager and the firefighter on the exterior of the building where the tenants were notified as to what had transpired. There were no tenants outside of the residential property with the exception of one other tenant.

After speaking with the resident manager and the firefighter, the tenants returned to their unit, unaccompanied, where they found the windows open and their fans running in front of the windows. The tenants left the windows open and the fans running for the couple of days that followed until the smoke smell dissipated.

On September 4, 2019 the property manager issued the *1 Month Notice to End Tenancy for Cause* ("1 Month Notice") to the tenants and it was personally served upon the tenants by the building manager on September 5, 2019. The tenants filed to dispute the 1 Month Notice within the time limit for doing so.

The reasons for ending the tenancy are, as indicated on the 1 Month Notice with an “x”:

<input checked="" type="checkbox"/>	Tenant or a person permitted on the property by the tenant has (check all boxes that apply):
	<input type="checkbox"/> significantly interfered with or unreasonably disturbed another occupant or the landlord.
	<input checked="" type="checkbox"/> seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
	<input checked="" type="checkbox"/> put the landlord's property at significant risk.
<input type="checkbox"/>	Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
	<input type="checkbox"/> damage the landlord's property.
	<input type="checkbox"/> adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.
	<input type="checkbox"/> jeopardize a lawful right or interest of another occupant or the landlord.
<input checked="" type="checkbox"/>	Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.

In the Details of Cause section of the 1 Month Notice, the property manager wrote: “Pot left unattended on stove. Fire Department attended for fire alarm 9:10 p.m. on September 2, 2019. Incident #19-58697.”

The landlord stated the date in the details of cause should have read September 1, 2019. The tenants confirmed that they understood the landlord was referencing the incident of September 1, 2019. The parties had no objection to amending the 1 Month Notice to reflect September 1, 2019 instead of September 2, 2019 in the Details of Cause.

### Landlord's position

The landlord is of the position that the circumstances of September 1, 2019 warrant the end of this tenancy. The landlord's president stated the landlord considers the tenant's actions of leaving a pot unattended on the stove on September 1, 2019 as being highly negligent and the landlord has zero tolerance for this type of conduct. The landlord pointed out that it has a responsibility to protect the occupants of the property and the property itself and the tenant's conduct could have resulted in a fire.

The landlord acknowledged that the unit was not damaged as the smoke and smoke smell cleared after the unit and building were ventilated and the landlord did not make submissions that costs were incurred by the landlord to remediate the smoke or smoke smell. However, the landlord submitted that there could have been loss of property and life if a fire had occurred. The landlord credits the neighbour and the building manager's actions with avoiding damage to the property or loss of life.

The landlord submitted that the tenants appeared to have a “no big deal” attitude and the landlord has to reassure its other tenants that the actions of a negligent tenant will not be tolerated.

The landlord pointed to the fire department order for the landlord to “remediate the situation and take all necessary precautions to protect life and property”. The landlord is of the position that in order to comply with the fire department’s order the tenants must be evicted.

The landlord provided a copy of the resident manager’s written report and the fire department report as evidence for this proceeding, among other tenancy related documents.

### **Tenant’s position**

The tenant explained that she had been boiling eggs in preparation for work the following day when the telephone rang and she received a call that her nephew had “cracked his head open”. The tenants immediately went to render assistance to her family members and the tenant forgot to turn the stove off when they left.

The tenants denied having a “no big deal” attitude and stated they are very aware that a fire would have resulted in loss of their property and property of others. The tenants also stated that they apologized a number of times to the resident manager on the evening of September 1, 2019.

The tenants pointed out that there was no fire. Rather, the eggs eventually exploded and the eggs burned but the pot or the eggs did not catch fire. The tenants stated that when the resident manager called them they returned to the property right away and spoke with the resident manager and firefighter. The stated that the firefighter indicated that these types of incidents occur relatively often. The tenants also ensured they left their windows open and their fans running for a few days to rid the unit and their possessions of the smell of smoke and it has disappeared.

The tenants submit that there was no damage to the landlord’s property or anybody else’s property. The tenants provided photographs of the rental unit stove and kitchen to demonstrate there is no damage.

The tenants submitted that the incident happened as a result of human error but that they have never done something like this before and the tenants offered their assurance that it will not happen again.

The tenants indicated that they enjoy their rental unit and do not want to put their tenancy in jeopardy.

### Analysis

Where a notice to end tenancy comes under dispute, the landlord bears the burden to prove the tenancy should end for the reason(s) indicated on the Notice. Where more than one reason is indicated on a notice to end tenancy, it is sufficient to end the tenancy where one reason is proven.

The facts of this case were largely not in dispute. Rather, the issue under dispute is whether the circumstances warrant an end to the tenancy.

Upon consideration of everything presented to me, I provide the following findings and reasons.

One of the reasons for ending the tenancy, as stated on the 1 Month Notice, was that the tenants caused extraordinary damage to the rental unit or property. In this case, both parties provided consistent evidence that the tenant's failure to turn the stove off when they left the unit while a pot of hardboiled eggs was cooking did not cause extraordinary damage to the rental unit or residential property. As such, I do not consider this stated reason for ending the tenancy further.

As for the landlord's assertions that the tenants actions put the landlord's property at significant risk or seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, the landlord pointed to the fire department's order to "remediate the situation and take all necessary precautions to protect life and property" as meaning the tenants should be evicted. However, the fire department's order does not specify eviction as being a requirement of the landlord and I am of the view that compliance with the fire department order is subject to what is reasonable in the circumstance at hand. In this case, the fire department found a smoke filled rental unit caused by unattended food burning on the stove. The smoke was removed relatively quickly and no other damage to the property required rectification. While the removal of

smoke is an obvious necessity to remedy the situation, I am less persuaded that the eviction of the tenants is also required.

I accept that the tenants did not intend to leave a pot on the stove unattended based on the tenant's explanation and no evidence to indicate otherwise. While I recognize that many disasters that are human caused were not intended, I find it appropriate to consider the circumstances that lead to the accident with a view to determining whether they are likely to repeat as I am of the view that repeatedly leaving a pot unattended carries more risk. The tenants provided an explanation for being distracted by a telephone call regarding a family emergency and rushing off to deal with that emergency. I find such an occurrence is unlikely to occur often.

Also of consideration is that a fire did not occur and I am not certain that burned eggs in the bottom of a pot would have caused a fire. I do recognize that burning or overheating some foods carry a risk of causing damage through smoke and/or fire with some foods being more dangerous than others, such as cooking with oil and grease. In this case, the tenant was cooking hardboiled eggs and the eggs eventually burst and burned after the water boiled dry. I am not persuaded that burned eggs would have resulted in a fire.

The landlord alleged the tenants had a nonchalant attitude about the situation; however, I heard them testify that they had apologized to the resident manager a number of times and in hearing from the tenants, I found that they appeared to take the situation seriously and recognized that if a fire occurred it would have resulted in damage to their property and the property of others. I also found the tenants to be sincere in offering assurances that such a thing will not happen again.

All of the above considered, I am of the view that the landlord's decision to issue the 1 Month Notice in these circumstances was overreaching and severe. I am of the view that a warning to the tenants is sufficient in this case and I cancel the 1 Month Notice with the effect that the tenancy shall continue at this time.

By way of this decision, the tenants are considered to be on notice that another incident such as the one that occurred on September 1, 2019 may warrant the issuance of 1 Month Notice to End Tenancy for Cause.

The tenants paid a \$100.00 filing fee for their application and I award them recovery of one-half of the fee, or \$50.00. The tenants are authorized to deduct \$50.00 from a

subsequent month's rent in satisfaction of this award and in doing so the landlord must consider the rent to be paid in full.

### Conclusion

The 1 Month Notice is cancelled and the tenancy continues at this time.

The tenants are considered to be on notice by way of this decision, that another incident such as the one that occurred on September 1, 2019 may be grounds for issuance of another 1 Month Notice to End Tenancy for Cause by the landlord.

The tenants are awarded recovery of \$50.00 of the filing fee they paid. The tenants are authorized to deduct \$50.00 from a subsequent month's rent in satisfaction of this award and the landlord must consider the rent paid in full.

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 31, 2019

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Residential Tenancy Branch