



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PUPPY HOLDINGS & D. ZANE LOWELL  
(MCDICKEN) and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, MNDC, LRE, OLC, FF

### Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for Cause, for compensation for loss or damage under the Act, regulations and tenancy agreement, to restrict the landlord's right of entry, for the landlord to comply with the Act, regulations and tenancy agreement and to recover the filing fee for this proceeding.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on November 17, 2019. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

### Issues(s) to be Decided

1. Is the Tenant entitled to an Order to cancel the Notice to End Tenancy?
2. Is there a loss or damage to the Tenant and if so how much?
3. Is the Tenant entitled to compensation for loss or damage and if so how much?
4. Is the Tenant entitled to restrict the Landlord's right of entry to the unit?
5. Has the Landlord complied with the Act, regulations and tenancy agreement?

### Background and Evidence

This tenancy started on March 1, 1993 as a one year fixed term tenancy and then continued on a month to month basis after the fixed term ended. Rent is \$1,065.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$280.00 at the start of the tenancy. The Tenant said a walk through inspection was completed at the start of the tenancy. The Landlord was unsure if an inspection report was completed.

The Landlord said he served the Tenant with a 1 Month Notice to End Tenancy for Cause dated October 30, 2019 by posting the Notice on the Tenants door on October 30, 2019. The Effective Vacancy Date on the Notice is November 30, 2019. The Tenant is living in the unit and the Landlord said he wants to end the tenancy.

The Landlord said the reasons on the 1 Month Notice to End Tenancy are that the Tenant has seriously jeopardizing health or safety of other occupants, putting the landlord property at significant risk, engaged in illegal activities that have put the Landlord's property at risk and adversely affected the quiet enjoyment of other occupants and the Tenant has breach a material term of the tenancy agreement. Further, the Tenant has not corrected the breach in a reasonable period of time.

The Landlord continued to say he misread the reason about the Tenant engaging in illegal activities. The Landlord said the Tenant has not done anything illegal, so he is withdrawing those reasons.

Further the Landlord said the main reason for the One Month Notice to End Tenancy for Cause is that the Tenant's unit is cluttered, unclean and in the opinion of the Landlord the unit is a fire hazard as well as raising safety and health concerns for the building. The Landlord said as a result of a water leak issue in the building the Landlord tried to enter the Tenants unit in October 24, 2019 but was denied access. The Landlord gave a Notice for Entry on October 25, 2019 and entered the Tenant's unit of October 29, 2019. The Landlord said the unit was extremely cluttered and full of boxes and garbage. The Landlord continued to say a decision to issue a One Month Notice to End Tenancy for Cause was made, and on October 30, 2019 the One Month Notice to End Tenancy for Cause Dated October 30, 2019 was issued to the Tenant.

The Landlord continued to say that a second inspection was done on November 26, 2019 and the Landlord found the unit to still be in a state that the Landlord feels is a fire and safety hazard to the occupants and that the Landlord's property is at risk because of the Tenant. The Landlord said they want to end the tenancy.

The Tenant's Counsel said the manager of the building Z.L. has just taken over management duties and he is a long time resident of the building. Counsel continued to say the Tenant is a long time resident of the building as well hand there is some issues between the Tenant and manager Z.L. which may cloud the issues. The Tenant's Counsel said the Tenant has cleaned and decluttered her unit and the Tenant submitted a letter from the Community Safety Division, Vancouver Fire Rescue Services that states

*"On November 26<sup>th</sup>, 2019 @ 0930 I completed a fire inspection of Unit # 604 at 1869 Comox St, Vancouver, BC.*

*During the inspection I did not find any life safety or fire concerns. The unit was well lived in but it would not fall into the category of excess clutter or hoarding.*

*No issues found at time of inspection."*

The Landlord was asked by the Arbitrator if they had contacted any qualified third parties to assess the condition of the Tenant's rental unit. The Landlord said no they had not. The assessment completed of the Tenant's unit was done by the Landlord's representative.

The Tenant's Counsel continued to say that the Tenant has corrected the alleged breach of a material term of the tenancy agreement. Consequently Counsel said she believes the Tenant has addressed and corrected the reasons or concerns the Landlord has given for issuing the One Month Notice to End Tenancy for Cause. Counsel said the Notice to End Tenancy should be canceled.

Further the Tenant's Counsel said the Tenant is requesting clarification or guidelines as to how the Landlord can enter the Tenant's unit and how often a unit inspection can be done. Counsel said the Tenant is feeling harassed by the Landlord as another inspection was completed on the Tenant's unit in late December, 2019. Counsel said there are procedures to follow when a landlord wants to enter a tenant's unit.

The Landlord said they have given correct notice to enter the Tenant's unit and the time the Tenant denied entry the Landlord believed it to be an emergency because there was a water leak and some flooding in the basement. The Landlord said they have and are willing to comply with the Act regarding entry to the Tenant's unit.

In addition the Tenant's Counsel said the Tenant is withdrawing her monetary claims as the evidence does not support them.

The Tenant's Counsel said in closing the Notice to End Tenancy should be canceled as the Tenant has corrected the issues in her unit. Further the Tenant would like some clarification on the frequency and purpose of any further inspections of her unit. The Tenant's Counsel closed by saying the Tenant is happy in her unit and wants to continue the tenancy.

The Landlord said in closing the inspection report the Landlord did on November 26, 2019 shows the Tenant's unit is a fire and safety hazard and the Landlord is concerned about the risk to his property. The Landlord said he wants to end the tenancy but will comply with the Act, regulations and tenancy agreement.

### Analysis

It is apparent from the testimony and evidence that there are issues between the Tenant and the Landlord and the Landlord's agent Z.L. In Section 47 (d) of the Act uses language which is written very strongly and it's written that way for a reason. A person cannot be evicted simply because another occupant has been disturbed or interfered with, they must have been **unreasonably** disturbed, or **seriously** interfered with.

Similarly the landlord must show that a tenant has **seriously** jeopardized the health or safety or lawful right or interest of the landlord or another occupant, or put the landlord's property at **significant** risk.

As the main issue in this dispute is the condition of the Tenant's unit, I must refer to the only third party evidence by a qualified agency "Community Safety Division, Vancouver Fire Rescue Services." Their written determination is that the Tenant's rental unit does not present a fire or safety concern and it is their conclusion that the unit does not constitute a hoarding situation.

In this case it is my finding that the Tenant has corrected the issues and reasons for issuing the One Month Notice to End Tenancy for Cause dated October 30, 2019. As well the reasons given for ending the tenancy have not reached the level of **unreasonableness, significance or seriousness** required by section 47(d) of the Residential Tenancy Act. I find in favour of the Tenant and Order the 1 Month Notice to End Tenancy for Cause date October 30, 2019 to be cancelled and the tenancy is ordered to continue as set out in the tenancy agreement.

Further I order both parties to comply with the Act, regulations and tenancy agreement regarding the Landlord's right of entry to the Tenant's rental unit.

As the Tenant has been successful in this matter I order the Tenant to recover the \$100.00 filing fee for this proceeding by deducting it from the February 2020 rent.

### Conclusion

I order the 1 Month Notice to End Tenancy for Cause dated October 30, 2019 is cancelled and the tenancy is ordered to continue as set out in the tenancy agreement.

The Tenant's February 2020 rent payment is reduced by \$100.00 so the Tenant can recover the filing fee for this proceeding from the Landlord.

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: January 06, 2020

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Residential Tenancy Branch