



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Shaughnessy Management  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing was scheduled to deal with a tenant's application to cancel a One Month Notice to End Tenancy for Cause. 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 that was before me upon the other and I admitted their materials into evidence.

The landlord described dropping off additional photographs two days prior on September 1, 2020 to the Burnaby Residential Tenancy Officer; however, the photographs were not yet uploaded to the service portal and I could not see them. The landlord confirmed that it was not seeking an adjournment and wished to proceed even without the additional photographs.

The hearing process was explained to the parties and the parties were permitted to ask questions about the process.

### Issue(s) to be Decided

Should the 1 Month Notice to end tenancy for Cause dated July 22, 2020 be upheld or cancelled?

### Background and Evidence

The tenancy started on July 1, 2012 and the tenant paid a security deposit of \$450.00. The tenant is required to pay rent of \$1021.00 on the first day of every month. The rental unit is an apartment style unit in a multi-unit building owned by the landlord.

On July 22, 2020 the landlord posted a One Month Notice to End Tenancy or Cause ("1 Month Notice") on the rental unit door. The 1 Month Notice has a stated effective date of August 21, 2020 and indicates the following reasons for ending the tenancy:

- ☐ Tenant or a person permitted on the property by the tenant has (check all boxes that apply):
- ☐ 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
- ☐ Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
- ☐ damage the landlord's property
  - ☒ adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
  - ☒ jeopardize a lawful right or interest of another occupant or the landlord.
- ☐ Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/

In the details of cause section of the 1 Month Notice, the landlord wrote:

Details of the Event(s): The unit is a fire hazard and health hazard. There are mice droppings, dead bugs in the fridge. Other tenants reported mice coming out from this unit and now more unit is interested. This is a serious health hazard in the building. The amount of material also blocking the door in case of fire. There is structural damage on the balcony. we can't do any repairs and maintenance. Because all the workers say they are not entering when they see the condition of the unit. we are asking the tenant for 4 years to clean up.

The building manager testified that prior to October 2019 the locks to the rental had been changed unlawfully. In October 2019 the locks were changed and the landlord was provided a copy of the key to the new locks by the organization that assists the tenant. Upon receiving the key to the new locks, the building manager tried the new key and tried opening the door to the rental unit. The building manager found the door would only open about one foot as it was blocked by debris. The building manager observed what appeared to be about four feet of debris stacked on the floor. The building manager issued a letter to the tenant to clean up the rental unit. On March 17,

2020 the landlord informed the tenant that the inspection would be suspended due to COVID-19. On July 4, 2020 the landlord notified the tenant that the unit would be inspected on July 21, 2020. The building manager inspected the unit on July 21, 2020 and took photographs of the rental unit, which the landlord provided as evidence. Following the inspection of July 21, 2020, the landlord issued the subject 1 Month Notice to the tenant on July 22, 2020. The tenant did not oppose any of these submissions.

The building manager testified that when she inspected the rental unit on July 21, 2020 she found that it smelled very bad, she found mice droppings, dead bugs, flies, what appeared to be a bloody blanket, and a great amount of debris in the rental unit. The landlord is of the position that the tenant has created a fire hazard and a health hazard in the way she is maintaining the unit. In addition, the building manager submitted that there is a great amount of possessions on the balcony and the balcony appears to be rotting; however, the landlord cannot gain access to the balcony to assess whether it is structurally sound and there is a risk it could collapse upon the balcony below which would be a serious risk to the tenant living below the rental unit. The landlord pointed out that it has a duty to protect the health and safety of its other tenants and its other occupants including those suffering from illness and young children and that despite the tenant having several months to clean up the unit, she did not.

The tenant acknowledged that was an excessive amount of possessions that needed to be dealt with but she explained that she has a frozen shoulder and she is unable to do many things because of her shoulder. In addition, the mental health organization that ordinarily assists her could not come help her during COVID. The tenant denied that a mental health disorder resulted in the accumulation of excessive possessions or lack of cleanliness. Rather, the tenant maintained that physical limitation prevented her from cleaning up and the tenant stated that she also had to babysit her grandchildren so she was not home very much. The tenant stated that she got it "as clean as I like" after receiving the 1 Month Notice, between the dates of August 21 and 26, 2020 and she provided photographs as evidence to show what it looked like after she finished cleaning; however, the tenant also acknowledged there "is more to do" but that she did not do any more in the event she is evicted.

The tenant denied that she has caused a mouse infestation or that the landlord saw mice droppings. The tenant denied the landlord found dead bugs and stated what the landlord saw was plant droppings.

As for the excessive amount of possessions in the rental unit, the tenant attributed some of the accumulation to a person that moved in without her consent and he brought in his possessions. The tenant stated this person lived in her unit between October 2019 and March 2020. The tenant explained she was too scared to call the police and have this person removed.

The tenant's advocate pointed out that there is no corroborating evidence from the fire department or a pest control technician or workers who have refused to enter the unit to demonstrate there is a fire or health hazard in the rental a unit.

The landlord responded that upon receiving the tenant's photographs of August 21, 2020 the building manager returned to do another inspection of the rental unit on September 1, 2020 and found the rental unit did not resemble the tenant's photographs. Rather, the landlord suspects the photographs must have been taken some other time, years ago. The landlord described the rental unit on September 1, 2020 as being slightly improved from its condition on July 21, 2020 as some items were removed but that it was still in such a poor condition the landlord maintains its position that tenancy needs to end to protect the other occupants and the property.

The building manager was adamant that what she saw was mice dropping and dead bugs and not plant droppings. The landlord acknowledged it did not get a report from the fire department or pest control or workers but submitted that workers would decline to enter the unit in its current condition.

The building manager recalls the tenant had a man residing in her unit in late 2018 or early 2019 and that the police escorted this man to the rental unit in an attempt to retrieve his possessions because the tenant would not let him get his possessions.

The landlord acknowledged it received payment of September 2020 rent from the organization that helps the tenant and it is willing to permit the tenant occupancy until September 30, 2020.

### 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. The burden of proof is based on the balance of probabilities.

Under section 32 of the Act, a tenant has certain obligations with respect to repairing and maintaining a rental unit, as reproduced below:

(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.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Where a tenant puts the health or safety of another occupant of the residential property or the landlord at significant risk, or puts the property at significant risk due to the tenant's failure to maintain reasonable health, cleanliness or sanitary standards, the landlord may pursue ending the tenancy of the offending tenant by issuing a 1 Month Notice to End Tenancy for Cause as provided under section 47 of the Act.

In this case, I did not hear of the tenant doing anything criminal and I do not consider the reasons indicated on the 1 Month Notice that correspond to "illegal activity". Rather, I proceed to analyze the reasons indicated on the 1 Month Notice that correspond to sections 47(1)(d)(ii) and (iii) of the Act, as reproduced below:

**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

(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;

In this case, it is unopposed that in October 2019 the landlord put the tenant on notice to clean up the rental unit and on July 21, 2020 the landlord inspected the rental unit and found a significant amount of debris and possessions on the floor and other surfaces.

Upon review of the photographs taken on July 21, 2020 I find the tenant has failed to maintain the rental unit in a reasonably healthy, clean and sanitary manner. The photographs demonstrate a significant volume of possessions stacked on top of each other on the floor and other surfaces. Also, I find the landlord's submission that there are dead bugs and pest droppings to be more likely than the tenant's submission they are plant droppings considering I see wings on what appear to be flies in the landlord's photographs. I find the amount of pests, including insects, to be significant and several unwashed items including dishes and clothing lying around in mass which supports a finding that the rental unit is unsanitary and unhealthy. Considering the unsanitary state and the sheer volume of excessive possessions, I accept that entering the rental unit poses a health hazard to anybody that may need to enter the rental unit to perform inspections and repairs, including the landlord's employees and contractors.

Even without a report from the fire department, I find common sense dictates that the significant volume of possessions in the rental unit poses a fire hazard as fire fighters would not be able to maneuver through the rental unit should it catch fire and the amount of possessions would provide significant fuel for a fire to burn and this situation puts other occupants of the building at significant risk and puts the landlord's property at significant risk.

Upon review of the balcony photographs, I see that it appears to be rotting at the bottom corners of the deck and the landlord ought to perform an assessment of the integrity of the balcony but I also see the tenant has a significant amount of items on the deck that would preclude the landlord or its contractors from accessing the balcony. I accept the landlord's possession as reasonable that failure to assess the condition of the balcony and make necessary repairs does pose a risk to the landlord's property and the health and safety of the occupant living below the rental unit.

As for the tenant's assertion that another person brought in some of the possessions in her unit, it is important to note that the tenant is responsible for the actions of persons she permits in the rental unit and if another person did bring in possessions, it was upon her to remove them so as to maintain adequate sanitary and cleanliness standards and not put the property and the health and safety of other occupants at risk due to the excessive amount of possessions.

The tenant claims to have cleaned up the unit on or about August 21, 2020; however, the landlord challenged the accuracy of those photographs given the condition of the unit the building manager observed on September 1, 2020. In any event, I am of the view that attempts to clean up after receiving the 1 Month Notice is insufficient on part of

the tenant. The tenant was given several months of notice to clean up the rental unit between October 2019 and July 2020, which I find is more than an adequate amount of time, and she failed to do so.

Although the tenant claims to have physical limitations, it is upon the tenant to enlist the services of others to maintain the unit if need be. Also, the tenant made a choice to babysit rather than clean up the rental and she must bear the consequences of her choices.

In light of the above, I find I am satisfied that the tenant's actions or neglect have resulted in creating a health and safety hazard at the residential property and the landlord had sufficient basis to issue the subject 1 Month Notice on July 22, 2020. Therefore, I uphold the 1 Month Notice and I dismiss the tenant's application.

Section 55(1) of the Act provides as follows:

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
  - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

In this case, I have upheld the 1 Month Notice and dismissed the tenant's application to cancel it. Upon review of the 1 Month Notice provided to me, I am satisfied that it meets the form and content requirements of section 52 of the Act. Accordingly, I find the criteria of section 55(1) have been met and the landlord is entitled to an Order of Possession.

Provided to the landlord with this decision is an Order of Possession effective September 30, 2020 as requested.

### Conclusion

The 1 Month Notice dated July 22, 2020 is upheld and the tenant's application is dismissed.

The landlord is provided an Order of Possession effective at 1:00 p.m. on September 30, 2020.

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: September 03, 2020

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Residential Tenancy Branch