



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SOCIETY FOR CHRISTIAN CARE OF THE  
ELDERLY and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      CNC  
                             OPC, FFL

### Introduction

This hearing was convened by way of conference call concerning applications made by the tenant and by the landlord. The tenant has applied for an order cancelling a notice to end the tenancy for cause, and the landlord has applied for an Order of Possession for cause and to recover the filing fee from the tenant for the cost of the application.

The hearing commenced on July 23, 2021 and was adjourned to August 11, 2021, and my Interim Decision was provided to the parties.

The tenant and an agent for the landlord attended the hearing on August 11, 2021 and each gave affirmed testimony. The landlord's agent also called 2 witnesses who gave affirmed testimony. The parties were given the opportunity to question each other and the witnesses and to give submissions.

My Interim Decision specified that any evidence either party wished to rely on at the August 11, 2021 hearing must be uploaded to the Residential Tenancy Branch system and provided to each other by no later than 5:00 p.m. on Friday, August 6, 2021. The landlord has uploaded evidence on August 6, 2021 and has provided it to the tenant. No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*, specifically with respect to the reasons for issuing it?

### Background and Evidence

**The landlord's agent** (hereafter referred to as the landlord) testified that this month-to-month tenancy began on February 9, 2011 and the tenant still resides in the rental unit. Rent in the amount of \$515.00 was payable on the 1<sup>st</sup> day of each month, which has been increased over time and is now \$615.00 per month. There are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$257.50 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a bachelor suite with a balcony on the 2<sup>nd</sup> floor of a 15 story building. The landlord also resides in the building.

The landlord further testified that on April 13, 2021 he conducted a general inspection and found the condition of the rental unit deplorable, and definitely health concerns for the tenant and others. There was damage to the suite, putting others at risk; plumbing issues as well. Damage has been extensive and unrepairable without complete remediation and renovation. The landlord was shocked, finding it basically uninhabitable.

When the tenant moved in there was new paint, new floors and everything was in liveable condition. The landlord referred to an eviction services company saying he wanted to issue a notice to end the tenancy for cause, and it was served.

The landlord also testified that the tenant presently continues to deny access. The landlord gave another letter on July 6, 2021, but the tenant said it was not possible for the landlord to enter due to the on-going hearing. On July 8 the landlord went in with police as witness stating the landlord wanted to gain access to take more photographs but was again denied access.

The landlord testified that photographs provided for this hearing show it will take a lot of time and effort to remediate. The tenant does not have the ability to make the repairs and it will require contractors to complete the remediation. There were also signs of bug feces and bio material in the bathroom. The landlord called a restoration company who were also denied access by the tenant. They have made a report, a copy of which has also been provided for this hearing, but it was based on the photographs. The extent of damage and unhealthy conditions were evident in the photographs, but could not be 100% accurate due to denied entry. The entire suite needs to be re-done.

The tenant continues to disobey rules about cleanliness and parking.

**The landlord's first witness** (SM) testified that he was present on May 4, 2021 when the tenant was served with a notice to end the tenancy. The tenant was present and allowed the witness to step in, and it was the same condition as in the landlord's photographs. It was deplorable; the bathroom was one of the worse the witness has seen, and he has seen a lot. It was so bad that he didn't want to stand there to breathe in the air. The bathroom was really bad, including floors and walls. The unit smelled of old or rotten food and litter was all over the place, and the witness recommended a restoration company attend, and believed that the condition of the rental unit could not be remediated by cleaning only.

The restoration report recommends replacing cabinets, possible clogged sink, flooring to be replaced, asbestos testing, countertops to be replaced as well as appliances. It also states that the bathroom has extremely unsanitary garbage, dirt, mold mildew and requires bio hazard clean. It also states a possible problem with drains in the sink and bathtub, and that a plumber is required for assessment, and needs repairs to bring to living standards. Floors needing to be cleaned or replaced, asbestos testing required, drywall to be remediated for mold, and may need pest control due to signs of bug secretions on walls. The living room is extremely contaminated, carpet needs replacing, bio hazard cleaning recommended, drywall to be cleaned, remediated, repaired and painted, and contents be removed as bio hazard waste.

With respect to the photographs provided by the tenant, the witness testified that the tenant also gave the landlord a letter showing that Molly Maid cleaned, but that doesn't take away from the fact that remediation is required in the rental unit.

The witness prepared a One Month Notice to End Tenancy for Cause and intended to post it to the door of the rental unit because the tenant wasn't there, but the tenant showed up, so it was handed to him. The tenant was very friendly and allowed the witness to enter the rental unit, and told the tenant that it was not as bad as the photographs show, referring to the living area, but the bathroom was atrocious. The tenant then had trouble breathing from being upset. The witness stayed with the tenant, who declined medical assistance.

A copy of the One Month Notice to End Tenancy for Cause has been provided as evidence for this hearing and it is dated May 4, 2021 and contains an effective date of vacancy of May 31, 2021. The reasons for issuing it state:

- Tenant or a person permitted on the property by the tenant has:
  - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;

- put the landlord's property at significant risk;
- Tenant has not done required repairs of damage to the unit/site/property/park.

The witness also testified that the effective date of vacancy contained in the Notice is incorrect, but self-corrects to the nearest date that complies with the *Residential Tenancy Act*.

**The landlord's second witness** (MM) testified that she was present when the One Month Notice to End Tenancy for Cause was served by the landlord's first witness.

The witness also served papers on August 5, 2021, being the notice of this hearing package from the landlord. The documents were served personally to the tenant, and both times, the tenant opened the door, but the witness did not go inside.

**The tenant** testified that the photographs that he provided for this hearing were taken within a week before the original hearing date, but does not recall the date.

The tenant is 67 years old, disabled and in ill health. This has been his home for over a decade, and also serves as the tenant's hospital room for recuperation. There have been no problems during the tenancy. The tenant does not recall numerous problems, but received a notice about 3 years ago, and going back to 2015 there was a notice about unpaid rent. In September, 2018 there was an issue with grey water, but the tenant's rental unit is at the bottom of the line and it backed up because of a flapper. It was taken care of by the Society, and had nothing to do with the tenant.

Since the COVID pandemic started about 1 ½ years ago, people have been in lock-down and the tenant's cleaning service stopped. At the beginning of March the tenant got COVID and was isolated in the rental suite. Services were not available. The tenant was sick for the months of March and April, and the tenant has no thyroid and a bad heart. The situation was beyond the tenant's control.

When the tenant recovered at end of April, he got ahold of Molly Maid, and signed up as a client. They had a huge back-log. Their contract says that they don't attend places with asbestos, mold, electrical hazards, or toxic fumes, but they did great work. The tenant's photographs show no degradation at all. Once they did that and other help was put in effect, they'll be back on Tuesday next week, then the tenant will have a carpet cleaner come in. The rental unit is a 12 x 20 foot suite. There's no mold and no water leaking. Everything in the suite except flooring is 50 years old.

The tenant further testified that in February he helped a friend with a diesel engine for his boat, and the bathroom was soiled with mechanic grime. The tenant was going to clean it

up but became totally immobilized with COVID and had no support. The tenant was in confinement and had food delivered. The empty juice boxes and containers in the landlord's photographs are from ordering in food, along with Kleenex and paper towels. At the end of April when the tenant became healthy, he put into effect a whole cleaning regiment and progressed as best as he could. The tenant was paying \$45.00 per hour for housekeeping services with discounts, but now with Molly Maid he pays \$75.00 per hour. Their back-log was 2 or 3 weeks. A receipt has also been provided for this hearing dated July 9, 2021. Housekeeping services have resumed, they require pre-payment and have a waiting schedule. They'll be there on Tuesday and again at the beginning of September, and once per month after that.

Prior to lock-down, the tenant had services from neighbours who would do housekeeping on a personal level, independently. The tenant is putting everything he can into the rental unit with great results; there's no mold or anything hazardous.

The tenant further testified that he will be moving because the tenant will require assisted living.

### Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. I have reviewed the One Month Notice to End Tenancy for Cause and I find that it is in the approved form and contains information required by the *Act*. The reasons for issuing it are in dispute.

I have also reviewed all of the evidentiary material, including the restoration report provided by the landlord. The landlord's witness testified that the report was based solely on photographs because the tenant denied entry. I have also reviewed the photographs which show extreme conditions. However, the report also contains recommendations and assumptions, particularly about mold, insects, and plumbing. I also consider the undisputed testimony of the tenant that the cabinets and everything other than flooring is 50 years old. Further, if asbestos removal is required, I don't see that as repairs required by the tenant, nor am I satisfied that there are any repairs that the tenant ought to have completed, other than cleaning. Therefore, I find that the landlord has failed to establish that the tenant has not required repairs of damage to the unit.

I also consider the testimony of the tenant that he had COVID and I find that to be a reasonable reason for denying entry for the landlord's agents.

I have also reviewed the photographs provided by the tenant which show that the rental unit is reasonably clean, along with a receipt for Molly Maid services dated July 9, 2021.

It is not for me to make a finding that the tenant will maintain the rental unit in the future, but whether or not the landlord had cause to issue the notice to end the tenancy at the time of its issuance.

It's very evident that the rental unit requires remediation, however how much is not known. I accept the testimony of the tenant that he was ill and unable to deal with the situation, but that does not explain the used tissue or paper towels or any of the numerous items in the bathroom, or the testimony of the landlord's first witness that he didn't want to stand there to breathe in the air. He also testified that the bathroom was really bad, including floors and walls, and that the unit smelled of old or rotten food. Considering the photographs and other evidence of the parties, I find that the landlord had cause to issue the Notice, being that the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord and put the landlord's property at significant risk. The tenant's application for an order cancelling the Notice is dismissed.

I hereby grant an Order of Possession in favour of the landlord. The effective date of vacancy contained in the One Month Notice to End Tenancy for Cause is changed to the nearest date that complies with the law, being June 30, 2021. Since that date has passed, I grant the Order of Possession effective on 2 days notice to the tenant.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the landlord in that amount and I order that the landlord be permitted to keep that amount from the security deposit held in trust, or may otherwise recover it by filing it for enforcement in the Provincial Court of British Columbia, Small Claims division.

### Conclusion

For the reasons set out above, the tenant's application is hereby dismissed.

I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

I further grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the landlord be permitted to keep that amount from the security deposit held in trust, or may otherwise recover it.

This order is final and binding and may be enforced.

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: August 19, 2021

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Residential Tenancy Branch