



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding More Than A Roof Housing and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      DRI, CNC, OLC

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants disputing a rent increase and seeking an order cancelling a notice to end the tenancy for cause and for an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement.

The tenants and 2 agents of the landlord attended the hearing, and one of the tenants and one of the landlord's agents gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

The system shows that evidence has been uploaded by 1 party, but does not indicate who it came from. The landlord's agent advised that it is from the landlord, all of which has been provided to the tenants. Part of the evidence includes a video, but the tenants have no equipment to view it on. The landlord's agent offered to provide a means for the tenants, but the tenants have not done so.

Since the landlord has offered to provide the means and the tenants have not taken advantage of that offer or attempted in any other way to view it, I find it necessary to view all of the landlord's evidence, including the video and it is considered in this Decision.

### Issue(s) to be Decided

- Have the tenants established that rent has been increased unlawfully?
- Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?

- Have the tenants established that the landlord should be ordered to comply with the *Act*, regulation or the tenancy agreement with respect to arbitrary rent increase?

### Background and Evidence

**The landlord's agent** (hereafter called the landlord) testified that this month-to-month tenancy began on May 1, 2009 and the tenants still reside in the rental unit. Rent is subsidized, and the tenants' share is 30% of their gross income, which amounts to \$614.00 currently payable on the 1<sup>st</sup> day of each month, and there are no rental arrears. No security deposit or pet damage deposit was collected by the landlord. The rental unit is an apartment within a complex containing about 240 units.

Rent is geared to income and the landlord follows guidelines of BC Housing to calculate the amount of rent annually. If people report CERB, they are put on a short-term rent review, which is reviewed again after a few months, and rent was reduced without taking CERB into consideration. That's a standard procedure.

The landlord also testified that on July 23, 2021 the tenants were served with a One Month Notice to End Tenancy for Cause (the Notice), and a copy has been provided for this hearing. It is dated July 23, 2021 and contains an effective date of vacancy of August 31, 2021. The reasons for issuing it state:

- Tenant or a person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed 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 adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely jeopardize a lawful right or interest of another occupant or the landlord;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

A Proof of Service document has also been provided for this hearing indicating that the tenants were served with the Notice on July 23, 2021 by personally handing it to the male tenant, with a witness signature.

The landlord testified that the primary reason for issuing the Notice is due to the tenant bringing people into the building and women particularly. They have entered the laundry area and the locker room. They are common areas and the tenant has left a sleeping bag and pillow in the area, and they are not the same woman each time. The tenant and guests have been smoking down there which is prohibited. The possibility of a spark on 40 year old wood is risk for the landlord's property.

The landlord gave the tenant a letter dated June 4, 2021 with respect to the tenant's conduct, and a copy has been provided for this hearing. It speaks of the tenant being in the laundry room on May 26, 2021 with a woman in a sleeping bag, and that the tenant was smoking, as well as the similar reports on May 31 and June 1, 2021. The letter refers the tenant to Section 21, Conduct and Section 26, Common Areas of the tenancy agreement:

Conduct

- Residents will not do or permit anything to be done in the rental unit or the residential property that is obnoxious, objectionable, illegal, noisy or offensive, not to allow anything to be done which would become a nuisance or cause damage, interference or injury to the rental unit, residential property, or other resident or the Landlord. Breach of this term by any resident will be cause for termination of the tenancy agreement.

Use of Common Areas

- a. The Tenant must take all reasonable steps to ensure that the use of common areas of the residential property, including any laundry room, recreation room and facilities, parking area or storage area, by any occupant will:
  - i. comply with all notices, rules or regulations on or about the residential property regarding the use or restrictions on use, of such common areas, and
  - ii. be prudent, safe and equitable.

The letter states that if any similar incidents happen, the tenants will be evicted.

The landlord has also provided a written complaint dated June 29<sup>th</sup> from another tenant complaining about the tenant bringing in a street person into the storage locker, as well as empties, which caused a stain and smell.

With respect to illegal activity, the landlord testified that the video shows theft taking place by a woman that the tenant took to that area helped herself to a chest or box from another person's locker, and can also been seen looking at other lockers. The landlord checked the video footage in the locker area after the other tenant complained about a break-in to

the locker and that's when the landlord discovered the sleeping bag and pillow. The landlord does not know if the locker was locked, and may have been broken but the other person described the chest and the landlord identified it in the video from her description.

The tenant has been warned 4 or 5 times even before June 4 warning and since 2018 from time to time about taking women into the building and into common areas.

The landlord also testified that if the One Month Notice to End Tenancy for Cause is upheld, the landlord would be content with an effective date of vacancy of December 31, 2021.

**The tenant** testified that he apologizes profoundly, but the motivation was not to indulge in devious behaviour, but the issue with the pillow and sleeping bags were his.

The tenant collects bottles and stores them in the locker room, which had not been raised as an issue. The tenant also found clothing that he puts in his locker which is why he brought 2 or 3 women that he knew could use the clothing.

The tenant did bring in another person after receiving a warning letter from the landlord, but only wanted to give her the remaining things in his locker. The tenant asked the woman with the chest where she got it from, and she confirmed it was from another person's locker and the tenant put it back. There was no damage done and nothing was stolen, it was put back within a few minutes.

The tenant admits smoking, however it's a concrete building and the lockers are wooden. It's not like the building is at risk.

With respect to the tenants' application disputing a rent increase, the tenant testified that no Notice of Rent Increase was served, but the tenants received a CERB payment from the government. The tenant didn't understand that some people had to pay a portion of it and the tenant felt singled out. The tenant gave the landlord statements of accounts and the tenant was asked about CERB. The landlord wrote out a new rent statement right there and for the next 4 months the tenant paid \$1,200.00 per month. Normally an increase would be spread over several months.

With respect to the tenants' application for an order that the landlord comply with the *Act*, regulation or the tenancy agreement, the tenant testified that the tenants are both seniors; aged 72 and 75. The tenant knows that he did some questionable activity by not complying with the landlord's final warning letter, and it will not happen again. It was

not designed to affect anyone else in the building, simply the tenant's dealings with other people to help them out.

### Analysis

Firstly, 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*.

With respect to the reasons for issuing it, the landlord need only prove 1. In this case, I am satisfied that the tenant's guest committed theft. Although I accept the testimony of the tenant that he replaced the stolen item immediately, the theft still occurred, which is illegal.

I also accept that the tenant breached a material term of the tenancy agreement which speaks of conduct of tenants, in that the landlord would not have contracted with the tenants if the tenants did not agree to that term. The landlord gave written notice to cease taking women into the storage room, and although the tenant merely wanted to give the remaining items he had collected to the guest, the tenant ought to have taken the items to a different location.

In the circumstances, I find that the landlord had cause to issue the Notice and the tenants' application to cancel it is dismissed.

With respect to the rent increase, the subsidy is provided to the tenants which requires the tenants to pay 30% of their income. I accept the testimony of the landlord that reviews are normally conducted annually but when CERB payments increased the tenants' income, the landlord may conduct a short term review, which I find has happened in this case. I am not satisfied that the tenants have established that the landlord has not complied with the law, and I dismiss this portion of the tenants' application.

The tenants' application for an order that the landlord comply with the *Act*, regulation or tenancy agreement refers to the rent increase, and the tenant testified that it applied to some tenants but not all. The tenant has not provided any evidence of that, and I dismiss the tenants' application for an order that the landlord comply with the *Act*, regulation or tenancy agreement.

The *Act* also specifies that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the Notice given is in the approved form. In this case, having found that the Notice is in the approved form, I grant an Order of Possession in favour of the landlord.

During the course of the hearing, the landlord advised that the landlord will be content with an effective date of vacancy of December 31, 2021 and I so order.

### Conclusion

For the reasons set out above, the tenants' application is hereby dismissed in its entirety without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord effective at 1:00 p.m. on December 31, 2021 and the tenancy will end at that time.

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: October 18, 2021

---

Residential Tenancy Branch