



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, FFT

### Introduction

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

The tenant and the landlord attended the hearing; the tenant was accompanied by a person for support, and the landlord was accompanied by her son for translation purposes.

The parties each gave affirmed testimony and were given the opportunity to question each other and to give submissions.

The parties agreed that all evidence has been exchanged, all of which 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 dated September 27, 2021 was given in accordance with the *Residential Tenancy Act*, specifically with respect to the reason for issuing it?

### Background and Evidence

**The landlord** testified that this month-to-month tenancy began on May 1, 2016 and the tenant still resides in the rental unit. Rent in the amount of \$1,000.00 was originally payable on the 1<sup>st</sup> day of each month, which has been increased over time and is now \$1,066.00 per month, and there are no rental arrears. At the outset of the tenancy the

landlord collected a security deposit from the tenant in the amount of \$500.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a basement suite and the upper level of the home is also tenanted; the landlord does not reside on the property. A copy of the tenancy agreement has been provided by the tenant for this hearing.

The landlord further testified that on September 27, 2021 the landlord served the tenant with a One Month Notice to End Tenancy for Cause by posting it to the door of the rental unit. A copy has been provided by the tenant for this hearing and it is dated September 27, 2021 and contains an effective date of vacancy of October 31, 2021. The reason for issuing it states:

- Tenant or a person permitted on the property by the tenant has:
  - put the landlord's property at significant risk.

In the summer of 2021 the landlord was in the rental unit and witnessed 5 fish tanks with fish in them as well as numerous plants. The parties had a conversation at the landlord's home and the tenant said she didn't want to live without plants. The main thing is heat, and the landlord's insurance company advised that it is not safe and is a fire risk. The tenant turns on heaters and then goes to work for 8 hours, and that's why the landlord is afraid. Copies of hydro bills and photographs have been provided by the landlord for this hearing.

The tenant is a good tenant and pays rent on time, but the tenant in the upper level has complained about too much heat and never turns on the heat in his rental unit.

**The tenant** testified that there is no risk to the landlord's property. The tenant has purchased a hydro meter and monitors hydro usage. A photograph of a reading has been provided for this hearing. There are no heaters, but grow lights which are all LED and on timers, usually for 8 hours. The humidity is good, and the temperature in the tenant's rental unit is kept between 20 and 22 degrees.

The tenant sells some plants on Face Book Market Place, but does not have a business selling plants. After the tenant realized that the landlord was displeased, the tenant tried to be reasonable and sell some plants. However, plants are a big part of the tenant's life and are always in windows and a garden outside. Nothing was said about that previously, so the tenant believed that was fine.

However, the other tenant is angry. The tenant talked to the other tenant about a party on July 11, 2021 asking that the other tenant be quiet and finally brought it to the landlord's attention, but does not believe that the landlord did anything.

The heating unit in the home breaks down a lot. The tenant in the upper level said that the floor was hot, but it has electric floor heating. The problem is with his unit, not the tenant's unit.

The landlord also rents a bachelor suite next to the rental unit. There are 3 people residing in the upper level, and there have been no complaints from the tenant next door.

### 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. In this case, I have reviewed the One Month Notice to End Tenancy for Cause (the Notice) and I find that it is in the approved form and contains information required by the *Act*. The reason for issuing it is in dispute.

The landlord's position is that the number of plants kept by the tenant in the rental unit is excessive, a fire risk according to the landlord's insurance company, causing the hydro bills to increase, and too much heat for the tenant in the upper level of the rental home. The landlord has not provided any evidence to support the testimony that the insurance company finds it a fire risk. There is a big difference between heaters and LED lights, and the tenant disputes that there are heaters.

I have reviewed all of the evidence provided by the parties including the hydro bills provided by the landlord and the hydro meter provided by the tenant. The photographs provided by the landlord show numerous regular house plants.

The tenant testified that the rental unit above has in-floor heating, and the landlord did not dispute that. I see nothing in the evidence to satisfy me that the tenant's plants have put the landlord's property at significant risk.

Therefore, I cancel the Notice and the tenancy continues.

Since the tenant has been successful with the application, the tenant is also entitled to recovery of the \$100.00 filing fee. I hereby grant a monetary order in favour of the

tenant as against the landlord in that amount, and I order that the tenant be permitted to reduce rent for a future month by that amount or may otherwise recover it by filing it for enforcement in the Provincial Court of British Columbia, Small Claims division as a judgment.

### Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause dated September 27, 2021 is hereby cancelled and the tenancy continues.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00, and I order that the tenant be permitted to reduce rent for a future month by that amount 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: February 07, 2022

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Residential Tenancy Branch