



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute codes      CNC FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of a One Month Notice to End Tenancy For Cause, pursuant to section 47 (the One Month Notice);
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. No issues were raised with respect to the service of the application and evidence on file.

The tenant's application was filed within the time period required under the Act.

### Issues

Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an order of possession? Is the tenant entitled to recover the filing fee?

### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, only the relevant details of their respective submissions and arguments are reproduced here.

The rental unit is the main and upper floor of a residential house. The tenancy began on February 1, 2021. The monthly rent is \$2400.00. There is another tenant in the basement of the house and a third tenancy in the coach-home.

There was no dispute that prior to a smoke alarm incident in the early morning hours of February 2, 2022, the tenancy was harmonious. The tenant is a single mother of one toddler. At the time of entering the lease the landlord agreed to rent his home to the tenant below the market rate to provide an opportunity for her and her child. The parties in fact renewed the lease on February 1, 2022.

The landlord served the tenant with a One Month Notice dated February 10, 2022, on February 16, 2022. The One Month Notice has an effective date of April 1, 2022. The landlord argues the One Month Notice should be upheld on the grounds that the tenant seriously jeopardized the health and safety of another occupant or the landlord and put the landlord's property at significant risk.

The landlord testified that on February 2, 2022, the tenant notified him of smoke alarm incident at the house. The tenant has described the incident to him as the fireplace had "exploded". The incident occurred on the main floor and the entire floor was full of smoke. He was advised by the tenant that fire crews attended and cleared out the house and the basement tenant had helped remove a smoldering cushion out of the house. The cushion belonged to the toddlers play couch. The landlord testified that when he learned the extent of the incident it was concerning to him the tenant did not report it until 3.5 hours after it occurred. The landlord testified that he lives only 5 blocks away and could have attended to the property. The landlord testifies that when he did attend later that evening, he inspected the fireplace and noticed some material appeared to be melted on to the outside glass. The landlord submits that the fireplace glass although shattered was still intact and not exploded as described by the tenant. The landlord submits that the burn mark on the cushion which was now outside the house appeared to match and line-up with the melted material on the fireplace glass. The landlord submitted pictures of the fireplace with the shattered glass as well as pictures of the burned cushion. The landlord testified that the tenant had told her the play couch was not up against the fireplace but rather a few feet away in an upside-down V shape. The landlord testified that the tenant was at first being evasive when questioned about the couch. The landlord submits that a Fortis gas inspector and the fire chief attending to the scene also noted that material from the cushion was melted on the glass. A report from the fire department also noted that the fireplace pilot was in the "on" position and turned off by the fire crew. They also noted that the thermostat was set on a low setting. The landlord submits the incident occurred in February during a cold spell. The landlord submits the inspectors found no fault with the fireplace and found it to be in working order aside from the glass needing to be replaced.

The landlord testified that while attending to the house in the days after the fireplace incident there were a couple more incidents which he submits has further eroded his trust in the tenancy relationship. The landlord testified that in one incident while at the unit he observed some grocery items including a cardboard box placed on top of the gas stove, the controls for which are on the front side easily accessible by a toddler. In another incident the landlord observed the tenant had left the back door unlocked when she was not home, leaving the house vulnerable to break-in and potential damage.

The tenant testified that she was sleeping upstairs at the time of the incident. After the smoke alarm went off, she got up and noticed smoke downstairs and found the fireplace was on and the glass had shattered. The tenant submits the smoke and heat escaped the glass and started to melt the cushion of her toddlers play couch. With the help of the downstairs tenant, she grabbed the cushion and threw it outside. The tenant submits that the cushion was not actually on fire and a fire extinguisher was not needed. She was not able to call the landlord immediately as the house was full of smoke. The tenant submits she never used the fireplace and that the pilot light was turned off by the landlord when she moved in. The tenant submits the fireplace turned on spontaneously and that the thermostat is very old and could have malfunctioned. There was no full investigation by the fire department since there was not an actual fire.

Regarding the stovetop incident, the tenant testified that she had just got grocery and was putting it away which is why it was temporarily on the stove top. Regarding the unlocked back door, the tenant testified that she had just left the door unlocked briefly for the cleaners.

In reply, the landlord testified that he does not recall turning the pilot light off when the tenant moved in and in either event that was a full year before the incident so the pilot light could have been turned on by anyone since. The landlord submits the fireplace is made of tempered glass designed to withstand extensive heat. The landlord submits the glass can however be compromised by an exterior heat source which in this case he believes was the play couch leaned up against it.

### Analysis

Section 47 of the Act contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 47(4) of the Act, a tenant may dispute a One Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. If the tenant makes such an

application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the One Month Notice.

In reviewing the testimony and evidence of the parties including the pictures of the shattered fireplace glass and burned cushion, I find that it is more likely than not that the tenant was negligent in placing the child's play sofa up against the gas fireplace. I agree with the landlord that there appears to be markings of some melted material on the outside of the glass fireplace which likely came from the cushion of the play couch. I find that the tenant put the landlord's property as well as other occupants at significant risk by placing the cushion against the fireplace. I accept that this outside source on the fireplace glass is what most likely caused the shattering of the tempered glass and could have very well been potentially catastrophic. I agree with the landlord and find that the pilot light could have been turned on at any time during the tenancy and likely was. Further, even if the thermostat malfunctioned as alleged by the tenant, I find that had it not been for the tenant's negligence in placing the couch and/or cushion in front of the fireplace, this incident could have been avoided. Although I find that this single incident on its own is sufficient to warrant an end to the tenancy; I find that the tenant not being forthcoming about how it occurred, and the subsequent incidents of the items on the stovetop and the unlocked door, have further eroded the trust in this tenancy relationship to the point of no return.

I find that the landlord has provided sufficient evidence to justify that it had cause to issue the One Month Notice. The tenant's application to cancel the One Month Notice is dismissed and the landlord is entitled to an Order of Possession pursuant to section 55 of the Act.

As the tenant was not successful in this application, the tenant is not entitled to recover the filing fee paid for this application.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: June 16, 2022

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Residential Tenancy Branch