



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding CANADIAN MENTAL HEALTH ASSOCIATION  
KOOTENAYS and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      **CNQ**

### Introduction

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the “Act”) for an order to cancel a 2 month notice to end tenancy issued because the tenant does not qualify for subsidized rental unit, pursuant to section 49.1.

The tenant attended the hearing accompanied by a support worker. The landlord was represented by property manager, DS. The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure (“Rules”) and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

### Preliminary Issues

- Service of documents

The landlord acknowledged service of the tenant’s Notice of Dispute Resolution Proceedings package and some of the tenant’s evidence but did not receive the photographs of the rental unit supplied to me for this hearing by the tenant. The support worker testified that she sent the photos to the landlord via regular mail on February 9, 2022. I determined that, even if the photos were deemed served upon the landlord five days after mailing, on February 14, 2022, they would not have been served at least 14 days prior to the hearing as required by Rule 3 of the Residential Tenancy Branch Rules of Procedure. The documents labelled bathroom\_1.JPG, bathroom\_2.JPG, kitchen.JPG, and bedroom\_JPG were excluded from consideration in this decision pursuant to rule 3.17.

The tenant acknowledged being served with the landlord’s evidence package.

- Landlord's name amended

The tenant did not name the landlord in full in her application for dispute resolution. The landlord confirmed the correct name for her organization during the hearing and I amended it on the cover page of this decision accordance with section 64(3) of the Act.

- Amend application to include issues

The tenant sought only to dispute the landlord's 2 Month Notice to End Tenancy for failure to qualify for subsidized rental unit. In her evidence, the landlord provided a copy of that notice to end tenancy, together with a 1 Month Notice to End Tenancy for Cause served on the same date. The landlord agreed that the merits of both notices to end tenancy should be determined in this hearing as they are substantially related. In accordance with rule 4.2, the tenant's application is amended to include the dispute to the landlord's 1 Month Notice to End Tenancy for Cause.

#### Issue(s) to be Decided

Should either notice to end tenancy be upheld or cancelled?

#### Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord gave the following testimony. The rental unit is a subsidized unit, subsidized through BC Housing and the tenants in the building have mental or other disabilities. It is not part of the landlord's responsibility to support the tenants in the building with independent living support, the tenants are responsible for arranging this themselves.

On October 4, 2022, the landlord personally served the tenant with both notices to end tenancy. The landlord testified that she served all 4 pages of the 2- month notice to end tenancy document, together with a letter dated October 4<sup>th</sup>. Only the first page of the

notice and the letter were provided to me in the landlord's evidence package. When I asked the landlord how and why the tenant no longer qualified for the subsidized rental unit, the landlord explained it was because the tenant can no longer live independently, in her opinion.

The reasoning for both notices to end tenancy was because the tenant was significantly interfering with or unreasonably disturbing other occupants of the building and the landlord. The landlord provided a chronology of the unreasonable behaviour in the document *Timeline\_ongoing\_Breaches\_SPA\_and\_Tenancy.pdf*, supplied as evidence. In it, the landlord describes incidences dating back to October 2018 whereby the tenant is alleged to have used the toilet in the amenity room and leaving a horrible mess of feces in the amenity room. When the landlord and a fire inspector came to inspect the fire alarms in each of the rooms, they found the unit in an unsanitary condition, with the smell of feces everywhere with piles of it on the floor and smears. The tenant's toilet was broken and the tenant didn't notify the landlord. The landlord testified that the tenant was defecating in plastic bags, and the odor could be smelled by others on the floor. After notifying the tenant's family, follow-up letters were provided to the tenant and the tenant was warned that if no significant attempt to make the unit safe, the landlord would issue a notice to end tenancy.

In April 2019, a plumber was called in to the building for a building wide drain cleanout and the plumber got sick from the odor in the tenant's unit. A letter from the occupant across the hall was filed, noting the odor of dying flesh could be smelled. Another letter was sent to the tenant and a warning was issued.

The landlord testified of further incidents of bags of poo and garbage bags hanging on the door of the tenant's door throughout 2019. In 2020, the tenant continued to relapse, and the tenant signed a support partnership agreement, however the landlord received more complaints from other tenants on the third floor that her unit "smells like death" and feces after signing the agreement. A second final warning was issued on June 10, 2020, advising the tenant was failing to meet her independent living requirements and the condition in the Act requiring her to maintain reasonable health, safety, cleanliness and sanitary standards throughout the rental unit and other residential property to which she has access. The tenant is warned that upon the lifting of the ban on evictions due to Covid, the landlord will be serving a notice to end tenancy for cause.

On September 27, 2022, the fire inspector came for another inspection after giving the tenant 10 days' notice of the inspection. Upon attending, the smell was so bad it made the landlord gag. The landlord testified that the tenant was in horrid condition, looking

extremely sick and malnourished. No garbage was taken out, and there was a horrible odor in the hallway. Further, the landlord alleges that whenever the tenant did take her garbage out, she dragged it along the hallways, leaving stinky traces of garbage in the halls.

The landlord submits that the repeated relapses is causing significant interference or unreasonably disturbs other occupants of the rental unit and the landlord.

The tenant's support worker reviewed the notices to end tenancy served upon the tenant and stated the tenant only received page 1 of the 4 page notice to end tenancy for failure to qualify for subsidized housing. The remaining pages 2, 3, and 4 were not served, although the accompanying letter from the landlord was received. The tenant acknowledges receiving all 3 pages of the 1 month notice to end tenancy for cause.

The support worker testified that her organization has been involved in the tenant's support and care since 2020. The tenant suffers from chronic bowel issues and requires adult pull-up absorbent underwear. During the covid pandemic, her organization suffered from understaffing and this tenant's care was put on hold in the summer of 2022. It was supposed to be for 6 weeks but it went unnoticed by her agency for 11 weeks. They are now involved in the tenant's care and have been assisting in her hygiene and health. According to the support worker, the unit looks fine now.

The tenant testified that her father died in 2021 and she has been in mourning since. She's been having mental challenges, anxiety and stress and is waiting for a therapist to assist. She disputes the allegation that it was she who made the mess in the amenity room, having only been there twice and never used the bathroom there. The tenant denies making a mess in front of her door. Any seepage was cleaned up by the carpet cleaning company she hired. The tenant also denies dragging her garbage along the carpets in the hallways.

The tenant testified she has changed her bedding, had the carpets cleaned and made efforts to change her behaviour. This began after getting the eviction notices from the landlord. The support worker added that the tenant can use the bathroom, make meals and take her medication. She has her aunt's support and the support of the organization assisting her with today's hearing. She will follow the care plan laid out in the support partnership agreement and would like to continue living in the rental unit.

### Analysis

I find the tenant was served with both notices to end tenancy on October 4, 2022 in accordance with sections 89 and 90 of the Act. The tenant filed an application for dispute resolution on October 14, 2022, 10 days after receiving them.

Section 49.1(4) states that a notice given under that section [Landlord's notice: tenant ceases to qualify for rental unit] must comply with section 52. Section 52(e) requires that the notice to end tenancy must be in writing and in the approved form. I heard differing testimonies about whether the landlord served all 4 pages of that document upon the tenant. Based on the support worker's testimony that they only had the first page and the fact that the landlord only provided me with page 1 of the 4 page document, I find that on a balance of probabilities, the tenant was not given all 4 pages. Accordingly, I find the notice to end tenancy was not in the approved form and I do not uphold it. The 2 month notice is cancelled and of no further force or effect.

The tenant filed to dispute the 1 Month Notice to End Tenancy for Cause within 10 days as required by section 47 of the Act. If the tenant disputes the Notice, pursuant to Rule 6.6 of the *Residential Tenancy Branch Rules of Procedure*, the landlord bears the burden to prove he or she has valid grounds to terminate the tenancy for cause. The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the Notice. In the matter at hand, the landlord must demonstrate that the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord.

Section 32(2) of the Residential Tenancy Act states that 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. Based on the evidence before me, I find that since October of 2018, the tenant has had difficulty in maintaining this standard.

I reviewed the photos taken in 2018, 2019 and 2020 and I accept the landlord's testimony that the stains on the carpet are indeed fecal matter. Based on the landlord's own testimony that the smell on September 27, 2022 was so bad that she vomited, I conclude that the smell unreasonably disturbed the landlord. I have also taken into consideration the letter from the fire inspector dated October 18, 2018, in which he notes *that there was human feces and smears all over the unit. The tenant was unsanitary and reeked of excrement.* Based on the evidence before me, I can reasonably conclude that others in the building were also affected by the smells emanating from the tenant's rental unit.

While I understand that there was a lapse in the tenant receiving the support she needs for independent living during the covid pandemic, I find that the tenant still had the responsibility to reach out and find appropriate assistance when she was no longer able to maintain her rental unit in accordance with section 32. In the support partnership agreement entered into with the landlord on July 30, 2020, the tenant agrees to the following:

- a) I will allow family and support staff access to my unit to assist me with the cleanliness, physical condition, maintenance and security as per the standard outlined in the Tenancy Agreement. I will seek out ongoing options for cleaning, pest control, odor, and up keep and garbage disposal.
- b) I will seek out and utilize support services available to me to support my mental and physical health.
- c) I agree not to cause any significant disturbances that affect my neighbors, guests, contractors, or compromise the quiet enjoyment of the landlord or other tenants.
- d) I will ensure my unit is clean and sanitary at all times as per the RTB and Tenancy manual.
- e) I agree to maintain my unit as stated in the {redacted} Tenancy Agreement. *(Clean is defined as free of garbage, food stored in order to avoid spoilage and smell, dishes free from food scrapes, and bathroom maintained to avoid smell and bacteria and all surfaces are free of dust ,dirt, grime, and grease). A tenant must maintain reasonable health, safety, cleanliness and sanitary standards throughout the rental unit and other residential property to which the tenant has access.*
- f) I agree to follow the Maintenance Request Policy and report any maintenance issues to Housing Staff as per the tenant Manual.
- g) I understand that this is my last and final chance to comply with independent living requirement and to follow the policies and procedures.

I find that the tenant failed to meet the requirements of the support partnership agreement. She also failed to maintain her rental unit reasonably clean and sanitary and in doing so, the tenant has caused others in the building to be unreasonably disturbed or significantly interfered with. Specifically, I find that the odor from the tenant's unit to be both significant and unreasonably disturbing.

I find that the tenant has demonstrated a pattern of returning to unsanitary behaviour after multiple interventions and many "last chances" given by the landlord. I am not satisfied the tenant will continue to maintain health, safety and sanitary standards if this tenancy were to continue. For these reasons, I find the landlord has proven the

grounds for ending the tenancy were valid at the time the notice to end tenancy was served.

Before I consider whether the landlord is entitled to an Order of Possession, I must consider whether the tenant's actions following service of the notice to end tenancy is relevant. In *Senft v. Society For Christian Care of the Elderly*, 2022 BCSC 744 Justice Wilkinson found that evidence of cleaning the unit after being served with the notice to end tenancy was relevant in deciding whether to issue an Order of Possession. In the case before me, however, I have insufficient evidence to make a similar determination. While both the tenant and her support worker have testified that the tenant's unit is now clean and the tenant is currently being supported by an organization, I have no documentary evidence to corroborate this. The photographs of the unit supplied as evidence by the tenant were excluded from consideration in the decision at the beginning of the hearing as they were not served upon the landlord.

I grant the landlord an Order of Possession. I find that the tenant's situation is unusual in that the tenant requires additional resources to find accommodations suitable for her special needs. As such, I grant the landlord an Order of Possession effective March 31, 2023 to allow for additional time for the tenant to find suitable accommodations.

#### Conclusion

I grant the landlord an Order of Possession effective 1:00 p.m. on March 31, 2023.

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 28, 2023

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Residential Tenancy Branch