



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, OLC, FFT

### Introduction

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

The landlord and one of the tenants attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions. The landlord has not provided any evidentiary material, and agrees that the tenants' evidence has been received. Therefore, all evidence provided by the tenants 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 December 23, 2022 was given in accordance with the *Residential Tenancy Act*, specifically with respect to the reasons for issuing it?
- Has the tenant established that the landlord should be ordered to comply with the *Act* or the tenancy agreement, specifically with respect to maintenance and repairs?

### Background and Evidence

**The landlord** testified that this fixed-term tenancy began on February 1, 2022 and reverted to a month-to-month tenancy after January 31, 2023, and the tenants still reside in the rental unit. Rent in the amount of \$1,150.00 is payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$575.00 which is still held

in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment; the landlord does not reside on the property. A copy of the tenancy agreement has been provided by the tenants for this hearing.

The landlord further testified that on December 23, 2022 the tenants were served with a One Month Notice to End Tenancy for Cause by registered mail, and a copy has been provided by the tenants for this hearing. It is dated December 23, 2022 and contains an effective date of vacancy of January 31, 2023. The reasons for issuing it state:

- Tenant or a person permitted on the property by the tenant has:
  - o seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
  - o put the landlord's property at significant risk;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The tenants have erected a wooden structure, and there was concern that it was semi-permanent and the potential of it causing harm. It is attached to the structure of the building and railing in 4 points, and along the patio attached to the building, which has the potential to damage the building. The tenant was never given permission and was told that verbally and then by a breach letter. Clause 44 of the tenancy agreement states: "The tenant agrees that any alterations or renovations remain the responsibility of the Landlord and the Tenant must not conduct any alterations or renovations to the premise or residential property without the written permission of the Landlord."

The landlord is a property manager, not owner of the rental property, and does not know why the landlord waited until December, 23, 2022 to issue the Notice. The landlord testified that the structure has been removed, which was done around the time that the tenants disputed the Notice.

The landlord has no other instructions from the landlord with respect to any other reasons for issuing the Notice.

**The tenant** testified that this is an incorrect way to deal with this situation. The tenant has not attached it to the structure. The railing is loose, and there is aluminum on the deck with sharp edges; the tenant asked that it be repaired. The property manager said that engineers said everything was okay. The tenant was told that pressure washing would not be happening, and the tenant assembled something wrapping around the patio and then removed everything when informed that a company would be pressure washing. The tenant invited the landlord to look, but no one showed up. The balcony is

badly built and no one has asked about the tenant's construction experience. Photographs have also been provided for this hearing.

The structure was sun-dried wood and light, no more weight than a couple of potted plants. It was put up for health reasons to block the sun. The tenant removed the roof part after getting the first notice to end the tenancy, and left a part on the back for plants. The rest of it was removed when the tenant received the notice about pressure washing in March, 2023.

The landlord has not done their job. The tenant had to replace security lights because the landlord refused to do so. The tenant also helped another tenant because the landlord wouldn't shovel snow. The tenant helped another tenant move out who wasn't able to get the landlord to replace lights. The quality of repair is poor since the property manager took over, with several deficiencies.

The building does not look like it was advertised, and the tenant has had a rocky experience with the landlord for their failure to deal with things they agreed to, and for the landlord to give a notice to end the tenancy 7 months after the original letter is not fair. When asked for clarification or reasons, the tenant gets a Clause 44 letter with no explanation. The tenant agreed to take the roof down, which took care of any weight issue and didn't hear anything about it again for 7 months. By then it had already been resolved. The tenant has experience with construction.

Currently, motion sensor lights need to be replaced, and the landlord was responsible for a number of issues that they didn't take care of.

#### SUBMISSIONS OF THE LANDLORD:

The evidence of the tenant confirms the landlord's statement about a structure being erected without consent of the landlord and contrary to Clause 44 in the tenancy agreement.

#### SUBMISSIONS OF THE TENANT:

This is an ongoing situation, and the tenant is not good at paperwork, but felt he had no option but to get the Residential Tenancy Branch involved.

#### 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 provided by the tenants, 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.

The landlord has not provided any evidence to support the issuance of the Notice, leaving me to rely on the tenants' evidence.

The evidence includes a letter from the landlord company to the tenants dated July 12, 2022 stating that the tenants were in violation of Clause 44 of the tenancy agreement, and warns that the tenants need to deconstruct the structure immediately. It also states that a follow-up inspection would take place on July 18 to ensure the structure had been removed, and if not sufficiently remedied, the tenant would be issued a notice to end the tenancy for breach of the tenancy agreement.

There is no evidence before me that the landlord did a follow-up inspection at all, but only that the landlord issued a notice to end the tenancy just before Christmas 5 months later. I agree with the tenant, that is not fair.

In the circumstances, I am not satisfied that the landlord has established that the tenants 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. The tenant testified that the balcony had sharp edges and that he notified the landlord of that. The tenant testified that the weight issue was taken care of, and nothing else was heard about it until the notice to end the tenancy was issued. I am not satisfied that the tenants have put the landlord's property at significant risk.

With respect to the alleged breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so, I find that the landlord's inactions were not done within a reasonable time. The landlord was asked during his testimony why it took until December to issue the Notice, and his reply was, "I don't know; I'm the property manager."

For those reasons, I cancel the One Month Notice to End Tenancy for Cause and the tenancy continues.

With respect to the tenants' application for an order that the landlord comply with the *Act* or the tenancy agreement, the landlord did not question or dispute the tenant's testimony that repairs, such as lights as well as snow removal has not been done by the landlord. In the circumstances, it appears that the landlord has been hit-and-miss with

respect to responsibilities of a landlord, and I order the landlord to comply with the *Act* by maintaining the rental building and property and making repairs when required.

Since the tenants have been successful with the application the tenants are also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in that amount in favour of the tenants as against the landlord in that amount, and I order that the tenants be permitted to reduce rent for a future month by that amount, or may serve the order on the landlord and file it 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 December 23, 2022 is hereby cancelled and the tenancy continues.

I hereby order the landlord to comply with the *Residential Tenancy Act* by making required repairs in a timely manner.

I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the tenants 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: May 05, 2023

---

Residential Tenancy Branch