



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing

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## **DECISION**

Dispute Codes: CNC, CNL-4M, OLC, FFT (x 2)

### **Introduction**

The Tenant made two applications under the *Residential Tenancy Act* (“Act”). In one application, he seeks an order cancelling a One Month Notice to End Tenancy for Cause (“Notice”) and recovery of the application fee. In another application, filed the same day as the first application, the Tenant seeks an order cancelling a Four Month Notice to End Tenancy For Demolition or Conversion of a Rental Unit (“4 Month Notice”), an order for Landlord compliance under the Act, and recovery of the application fee.

### **Preliminary Issues: 4 Month Notice and Order for Landlord Compliance**

Given my findings, decision, and order below, I need not address the 4 Month Notice, nor shall I address the claim for an order for Landlord compliance. Those two claims for relief, including the claim to recover the cost of the application fee on the second application are dismissed without leave to reapply.

### **Issues**

1. Is the Tenant entitled to an order cancelling the Notice?
2. Is the Tenant entitled to recover the cost of the application fee?

### **Background and Evidence**

In an application under the Act where a tenant disputes a notice to end tenancy, the respondent landlord must prove the reason for issuing the notice to end tenancy on a balance of probabilities. Stated another way, the evidence must show that the events in support of the reason for issuing the notice to end tenancy were more likely than not to have occurred.

I have reviewed and considered all the evidence that was served upon the opposing parties by each party but will only refer to that which is relevant to this decision.

According to the Landlord, the Tenant “intentionally broke into three locked common rooms. A locked Electrical room, locked laundry room and the R&M / Maintenance room where the supplies for the building are located. Tenant is aware of the posted Emergency numbers in the Building and also noted several times on the tenant’s Rental Agreement.”

As a result of this intentional breaking into the rooms, the Landlord served the Tenant with the Notice in-person on November 20, 2023. (The Tenant’s application indicates that the Notice was served by being attached to the door of the rental unit.)

The Notice indicated that the tenancy was being ended under three subsections of section 47 of the Act. Namely, that (1) the tenant or a person permitted on the residential property by the tenant has (iii) put the landlord's property at significant risk; (2) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that (i) has caused or is likely to cause damage to the landlord's property; and, (3) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property.

The Landlord reiterated several times during the hearing that the Tenant had the emergency contact number but chose not to call it. If the Tenant had called it, then there is also an additional phone number that may be called. The Landlord testified that there is no record of either the Tenant or his neighbour calling this number.

The Tenant testified that, yes, he did break into these rooms. While at work, he received a message from a neighbour who said that there was water pouring out of the rental unit. He left work early, after calling M. at another office, who said that the Landlord’s representative was in Vancouver. The Tenant made “the hard decision” to break the locks and deal with the water leak. He cleaned up the water and got a shop vac. The Tenant waited for a tradesperson to arrive, though apparently that never happened. In summary, the Tenant reiterated that he did what he did because he was “terrified” that the leak would lead to a fire.

### Analysis

The Landlord issued the Notice under three sections of the Act, one of which was under section 47(1)(e)(i) of the Act. Section 47(1)(e)(i) states that a Landlord may issue a notice to end the tenancy if

the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has caused or is likely to cause damage to the landlord's property

Having carefully reviewed and considered the Landlord's evidence (bearing in mind that the onus to prove at least one ground for ending the tenancy falls upon a landlord who issues a notice to end the tenancy), it is my finding that the Landlord has proven a ground under section 47(1)(e)(i) of the Act. The Tenant is alleged—and he acknowledges as much—to have broken locks to enter the common rooms. The illegal activity is the breaking of the locks, which falls under section 430(1) of the *Criminal Code* as mischief. The Tenant wilfully damaged the property, the locks, and thus is considered to have engaged in illegal activity (though, not as egregious as the Landlord's claim that it was a break and enter) that has caused damage to the Landlord's property.

While it is not lost on me that the Tenant strongly believed that he needed to break into the locked rooms to address a water leak, the Tenant's motives or intentions are simply not a factor, or a legal defense as it were, in a proven breach under the Act. A landlord only needs to prove on a balance of probabilities that the tenant breached the Act or engaged in activity captured under section 47 of the Act, and they need not prove that the tenant had any intent. Nor is a tenant entitled to rely on a defence, such as due diligence, necessity, or accident.

Taking into careful consideration all the relevant oral and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the Landlord has discharged their onus of proving a ground for ending the tenancy and for issuing the Notice. The Notice is therefore upheld and the Tenant's application to dispute the Notice is dismissed without leave to reapply.

Pursuant to section 55(1) of the Act the Landlord is granted an order of possession of the rental unit. I have, further, reviewed the Notice and find that it complies with section 52 of the Act in form and content.

Finally, having considered the submissions of the parties in respect of when the tenancy ought to end should the Notice be upheld, I exercise my discretion under section 55(3) of the Act and order that the tenancy shall end on March 31, 2024.

Despite the Landlord's submission about the Tenant posing a danger, the Landlord made no application to end the tenancy under section 56 of the Act, nor did I find the Landlord to have made any compelling argument that the Tenant's breaking of the locks and entering the common rooms caused any significant or real risk to the property or to the other tenants. For this reason, the tenancy shall end at 1:00 p.m. on Sunday, March 31, 2024. The effective date of the order of possession reflects this date.

A copy of the order of possession is issued with this Decision to the Landlord, who must immediately serve a copy of the order of possession upon the Tenant.

#### Conclusion

The application is dismissed.

The Landlord is granted an order of possession, and the tenancy ends on March 31, 2024.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: February 16, 2024

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Residential Tenancy Branch