# DECISION

## Introduction

This hearing was convened under the *Residential Tenancy Act* (The ***Act***) in response to cross applications from the parties.

The Landlord filed their application on February 6, 2025. The Landlord seeks:

- An order of possession pursuant to their One Month Notice for Cause (per section 55 of the *Act*).
- Recovery of their $100.00 filing fee (per section 72 of the *Act*).

The Tenant filed their application on February 7, 2025. The Tenant seeks:

- Cancellation of the Landlord's One Month Notice for Cause (per section 47 of the *Act*).
- An order for the Landlord to provide services or facilities required by law (per section 27 of the *Act*).
- An order that they be allowed to remain in the Rental Unit (the term "Rental Unit" is defined on the cover page of my decision).

## Service of Records

LM for the Landlord acknowledged receipt of the Tenant's application, by registered mail, sent in accordance with section 89 of the *Act*.

LM testified that they never received any documentary evidence from the Tenant. The Tenant submitted several records to the Residential Tenancy Branch, including pictures that the Tenant testified they took in January 2025, a copy of their resume, a doctor's note dated February 24, 2025, a support letter dated February 8, 2025, a support letter dated February 9, 2025, and a news article from September 2024, titled "Vancouver's rat problem: Why are there so many, and what now?".

LM submitted that the above evidence should not be considered, because they were never served to the Landlord.

LM submitted that the night before the scheduled hearing, which took place on March 4, 2025, at 9:30 AM, the Tenant contacted one of the Landlord's agents and asked if they could serve evidence to that agent.

The Tenant did not dispute LM's submissions. The Tenant testified that they never submitted their evidence to the Landlord by the time the hearing started, and they did not provide any valid reasons for their failure. Later during the hearing, the Tenant testified that in January 2025 they visited their family member in another city. I note that both applications were filed in February 2025, not in January 2025, and the Tenant could not recall the exact dates they were away in January 2025.

Rule 3.1 of the Residential Tenancy Branch's (the **Branch**) *Rules of Procedure* states that that an applicant must serve their evidence to their counterparty. Rule 3.17 states that evidence not provided to the other party in accordance with the *Act* or Rules 2.5 3.1, 3.2, 3.10.5, 3.14 3.15, and 10 may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence.

Rule 3.17 further states that the arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of procedural fairness. Both parties must have the opportunity to be heard on the question of accepting late evidence.

In this case, the Tenant never served the Landlord with their evidence, <u>at any time</u>. I note that the bulk of their evidence were available at the time they served the Landlord with their application. In any event, the Tenant could have mailed their evidence to the Landlord, separately, after they filed their application, which they never did. The Tenant testified that they were away on unidentified dates in January 2025, before any applications were filed.

With respect to the doctor's note dated February 24, 2025, the Tenant failed to provide any explanation for why they failed to serve the Landlord with a copy of the Note after February 24, 2025.

For the above reasons, I decline to consider the Tenant's <u>unserved</u> evidence in making my decision.

In addition, based on a cursory review of the Tenant's records, I find a newspaper article about Vancouver's rat problem, generally, and the Tenant's resume, to be entirely irrelevant to the parties' dispute.

Neither party requested an adjournment of the hearing, and the hearing went ahead as scheduled.

The Tenant acknowledged receipt of the Landlord's application and documentary evidence, sent to them by registered mail, in accordance with sections 88 and 89 of the *Act*.

After making my decision, I reviewed the records submitted by the Tenant with the aim of identifying any records that, if considered, could change my decision (in which case I would adjourn the matter to a later date to provide the Tenant an opportunity to serve their records to the Landlord and to provide the Landlord an opportunity to respond to the records). I find, after reviewing the Tenant's records, even if considered, my decision would remain the same.

During the hearing, the Tenant testified that they did not submit any pictures to support their claim that they made effort to clean the Rental Unit. The pictures that the Tenant submitted are either entirely irrelevant (for example, the Tenant submitted several pictures of picture frames on walls), or they affirm the unclean state of the Rental Unit, as shown in the Landlord's pictures.

I also reviewed the Tenant's support letters. The only relevant support statement is with respect to an individual named DM assisting the Tenant in removing 35 plants from the Rental Unit. At the hearing, EY acknowledged that the Tenant removed plants from the Rental Unit. In short, the Tenant's documentary evidence, even if accepted, would not change my findings and orders in this decision.

**Background Facts and Evidence**

I have reviewed all evidence, including the parties' testimonies, but I will refer only to what I find relevant to my decision.

The parties agreed that:

- This tenancy began between the Tenant and the previous owner(s) and landlord(s) of the Rental Unit.
- The Tenant moved into the Rental Unit in 2013.
- The Landlord assumed this tenancy from the previous owner(s) of the Rental Unit on May 1, 2018.
- The Tenant's current monthly rent is $1,560.00, but they also pay the Landlord a $50.00 monthly parking fee (in aggregate, the Tenant pays the Landlord $1,610.00 for rent and parking).
- The Landlord holds a $625.00 security deposit, in trust for the Tenant.
- The Landlord served the Tenant with a One Month Notice to End Tenancy for Cause, signed and dated by an agent of the Landlord on January 15, 2025, with an effective date of February 28, 2025 (hereinafter referred to as the **Notice**).

The Tenant testified that they received the Notice on January 31, 2025. LM submitted that the tracking history portal of Canada Post indicates that on January 20, 2025, a delivery slip was left for the Tenant by Canada Post indicating when and where to pick up the associated package. LM submitted that the deeming provisions of section 90 of the *Act* should be used to find the Tenant was deemed served earlier than January 31, 2025. The Tenant testified that they were away in another city in January 2025 for several days, but they could not recall exact dates.

The Landlord submitted a copy of the Notice for consideration. On page two of the Notice, the Landlord's agent selected several grounds for ending the tenancy:

- The Tenant 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 or a person permitted on the property by the tenant has put the landlord's property at significant risk.
- The Tenant has not done the required repairs of damage to the unit.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Landlord's agent also completed the "Details of Cause(s)" section of the Notice, which I have reviewed.

LM referred to the following records, all of which I reviewed during and after the hearing:

- Letter from the Landlord to the Tenant, dated June 10, 2024, respecting complaints received "of erratic and inappropriate behaviour [from the Tenant]".
- Letter from the Landlord to the Tenant, dated July 18, 2024, respecting the state of the Rental Unit and the Tenant's failure to maintain "reasonable health, cleanliness and sanitary standards" (the **Landlord's July Letter**).
- Letter from the Landlord to the Tenant, dated December 14, 2024, respecting the state of the Rental Unit and the Tenant's failure to maintain "reasonable health, cleanliness and sanitary standards" (the **Landlord's December Letter**).
- Letter from a pest control company called CPM, to the Landlord, dated September 17, 2024, respecting CPM's observations of the Rental Unit on September 17, 2024, and their recommendations (the **First CPM Letter**).
- Letter from CPM, dated December 19, 2024, to the Landlord, respecting CPM's observations of the Rental Unit on December 19, 2024, and their recommendations (the **Second CPM Letter**).
- Pictures of the Rental Unit, which EY testified they took from inside the Rental Unit, personally, on July 17, 2024, September 17, 2024, October 11, 2024, December 19, 2024, and January 13, 2025.

At the hearing, the Tenant acknowledged that they received the Landlord's warning letters at the time of their issuance in June 2024, July 2024, and December 2024.

LM submitted that as evidenced by the Landlord's pictures and the two letters from CPM, the state of the Rental Unit is such that it is no longer possible to treat the Rental Unit for pests. In addition, LM submitted that the Rental Unit is now a fire hazard, and the Tenant has shown unwillingness to correct their behaviour, notwithstanding previous written and verbal warnings.

LM submitted that the Landlord has been compassionate and provided the Tenant multiple opportunities to correct the issues, but the Tenant never acted. LM submitted

that the building in which the Rental Unit is in is at risk because of the state of the Rental Unit.

LM addressed the Tenant's submissions in their application and submitted that the presence of rodents in "other buildings" or throughout the city is irrelevant to the dispute. LM submitted that the Landlord contracted with a certified third-party pest control company, whose agents have been unable to perform their duties due to the "phenomenal" state of the Rental Unit.

In response, the Tenant testified that in July 2024 there was a problem with water leaking into the unit below the Rental Unit and one of the Landlord's agents requested access to the Rental Unit while the Tenant was away. The Tenant testified that they provided EY access and when they returned, they spoke with EY on the phone. The Tenant testified that EY had only taken pictures of the "bad areas" of the Rental Unit, which they later showed BN, another agent of the Landlord.

The Tenant testified that in December 2024, BN contacted them regarding a freezer on their balcony, which they threw away later.

The Tenant testified that BN never spoke with them regarding the overall state of the Rental Unit.

The Tenant testified that in any case, they have cleaned the Rental Unit. I asked the Tenant if they submitted any pictures showing the Rental Unit clean, and the Tenant testified that they did not.

The Tenant testified that that they have a difficult time remembering dates, but they recall they and their friend taking items to the garbage area of the building in which the Rental Unit is in, sometime in December 2024.

In response, EY testified that they were last in the Rental Unit on January 13, 2025, and they submitted pictures which they took during their visit on that date.

I will address the balance of the Tenant's application under the "Analysis" section, below.

## Analysis

Section 47 of the *Act* states that a landlord may issue a One Month Notice to end a tenancy when the landlord has cause to do so under the *Act*.

As stated in the Branch's Policy Guideline 12, the deeming presumptions of section 90 of the *Act*, respecting service, can be rebutted if fairness requires that that be done (*Atchison v British Columbia*, [2008] B.C.J. No. 1448.). In addition, the deeming provisions are applicable when there is evidence that a party refuses to accept or pick up the item. In this case, the Tenant did pick up the Landlord's package containing a

copy of the Notice. The parties agreed that this took place on January 31, 2025. The Tenant testified that during the month of January 2025, they were away on vacation which could have delayed their visit to their local post office. Considering there is clear evidence from the parties that the Notice was picked up by the Tenant on January 31, 2025, I find it is unnecessary and inappropriate to deem the Notice served under section 90 of the *Act* or pursuant to section 71(2)(b) of the *Act*. In short, I find the Tenant received the Notice on January 31, 2025.

The Tenant filed their application within 10 days of receiving the Notice. Consequently, the Landlord bears the onus to prove one or more of the grounds selected on page two of the Notice, which I copied in the previous section of my decision. The standard of proof in this tribunal is on a balance of probabilities.

The Landlord's pictures show a considerable number of personal possessions, furniture, and garbage in the Rental Unit. I cannot find any discernible difference in the pictures, which EY testified were taken on five different dates, between July 17, 2024, and January 13, 2025. The Tenant did not oppose the Landlord's evidence regarding the dates provided by the Landlord.

The Rental Unit's kitchen, as shown in the submitted pictures, is especially cluttered with items. In a picture marked as number 29, the floor of the kitchen is no longer visible, because of approximately two feet of garbage and personal items placed on the floor. Countertops, appliances and cupboards are also covered with items.

In the Landlord's July Letter, which the Tenant acknowledged they received, the Landlord stated the following: "during a recent visit to your suite to address a plumbing issue your suite was found not to be in compliance with required health and safety standards". The Landlord then stated that a "follow up inspection will be conducted on August 29, 2024 at 10 am to ensure that conditions in your unit have been improved."

In the Landlord's December Letter, the Landlord indicated that the Tenant did not address the issues identified by the Landlord in the Landlord's July Letter, as evidenced by the condition inspection of the Rental Unit on August 29, 2024. In the Landlord's December Letter, the Landlord stated that a further inspection will be conducted on December 19, 2024.

In both above letters, the Landlord provided the following instructions for the Tenant to follow: "[y]our rental unit was found to overly cluttered, an environment that creates a potential fire hazard as well as potential pest problems. You must declutter your unit immediately to bring it up to reasonable health and safety standards."

Considering the Tenant's acknowledgment of receipt of the above letters, I find the Tenant was aware of the Landlord's requirements, notwithstanding the Tenant's testimony that BN never raised the overall state of the Rental Unit as an issue on the phone. Even if I accept the Tenant's testimony, the Tenant testified that BN was irate about the state of the Rental Unit's balcony. It is therefore possible that BN's primary

concern in December 2024 was the Rental Unit's balcony. In any case, I find it implausible, considering the warning letters (which the Tenant acknowledged they received), at least five visits to the Rental Unit by EY (as evidenced by the Landlord's pictures and EY's uncontested testimony), a follow up inspection in August 2024, at least two visits to the Rental Unit by CPM agents for pest control, and at least one phone call between BN and the Tenant regarding the Rental Unit, that the Tenant was unaware of the Landlord's demands regarding the Rental Unit and their requirement that the Rental Unit be decluttered. On a balance of probabilities, I find the Tenant was aware of the Landlord's demands.

In the First CPM Letter, the visiting agent provided the following observations:

> The floor was not visible due to the number of personal items (clothes, tools, boxes, and other misc. items) throughout the kitchen, living room, bedroom and bathroom. There were no areas around the perimeter of the unit to work safely, except for one exposed area of the heater. There were droppings in all rooms yet it was undetermined during the inspection how long the droppings had been there. It was not possible to enter the bedroom since too many personal items were scattered throughout.

The agent then recommends that the Rental Unit be "cleaned and decluttered" and further stated that: "[d]ue to extreme condition of the unit, any pest issues will escalate quickly if proper procedures of eradication are not implemented immediately."

In the Second CPM Letter, dated December 19, 2024, the visiting agent provided the following observations (underlined by me, for emphasis):

> The general state of the unit was very cluttered and possibly worse than the first time. A proper inspection could not be performed due to the amount of clutter around the appliances. The state of this unit is untreatable and poses safety issues due to the limited accessibility in the unit.

The Tenant testified that they made efforts to clean the Rental Unit in December 2024. However, as I have already found, the Landlord's January 2025 pictures of the Rental Unit show no discernible difference in the state of cleanliness.

The Tenant testified that they made further efforts since January 2025, but they never submitted evidence of their efforts (in the form of pictures). I find this testimony to be self-serving and unreliable, because the Tenant also indicated they cleaned the Rental Unit in December 2024, which, based on my review of the Landlord's pictures, some of which were taken in mid-January 2025, proved to be incorrect. It is also plausible that what the Tenant considers to be adequate efforts at cleaning and what a reasonable person would consider clean is vastly different.

One of the grounds selected by the Landlord in the Notice is that the Tenant 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.

Policy Guideline 55 states that "Jeopardized the safety" may involve actions or failures to act that create a dangerous environment. This could include fire hazards, throwing items off a balcony or violence that could lead to serious physical harm.

Policy Guideline 55, with respect to unsanitary living conditions or hoarding as a cause to end the tenancy states:

> Unsanitary Living Conditions or Hoarding: Tenants allowing their unit to become excessively dirty or cluttered, leading to pest infestations, mould growth, fire hazards, or other serious health hazards beyond their rental unit.
>
> A rental unit or manufactured home site does not have to be kept in immaculate condition. If it is at a standard that most people would consider ordinary or normal cleanliness, a tenant is meeting their obligations under the legislation. Even if not quite at this standard, an untidy unit is typically not sufficient for a notice to end tenancy. The unit or site must be at a level of uncleanliness that it is putting the safety of the landlord or other occupants at risk; for example, it is so dirty that it attracts pests or is so cluttered that it poses a fire hazard.

I find, based on all the evidence above, namely the Landlord's pictures, the CPM letters, and the parties' testimonies, that at the time the Notice was issued, the Tenant Seriously jeopardized the health or safety of the landlord or another occupant of the rental building in which the Rental Unit is in, and further put the Landlord's property at significant risk.

I make the above findings, because there is clear evidence of pest activity in the Rental Unit (observed by both the Tenant and the pest control company agents that visited the Rental Unit on two different occasions in September 2024 and December 2024) and the Landlord's efforts to deal with pests in the Rental Unit have been blocked by the Tenant's refusal and/or inability to clean the Rental Unit. I note that in the Second CPM Letter, the agent identified the Rental Unit as "untreatable" and "worse than the first time".

I find the Rental Unit is so cluttered that it poses a fire hazard.

I find the Landlord has met their burden to prove that the Notice was given for a valid reason, and I uphold the Notice. The Tenant's application for cancelation of the Notice is dismissed, without leave to reapply.

Section 55 of the *Act* states that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if the Landlord's notice abides by the form and content requirements of section 52 of the *Act* and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Having reviewed the Notice, I find the Notice is compliant with the form and content requirements of section 52 of the *Act*, because it is signed and dated, it provides the

correct effective date, it provides the Rental Unit's address and the grounds for ending the tenancy, and it is in the prescribed form.

For all the above reasons, I find that the Landlord is entitled to an Order of Possession based on the Notice, under sections 47 and 55 of the *Act*. Section 55(3) of the *Act* states that the director may grant an order of possession before or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order.

In this case, the tenancy has been long-standing, suggesting the Tenant may need additional time to vacate the Rental Unit, especially considering the state the Rental Unit is in. In addition, the Tenant is elderly.

LM submitted that notwithstanding the above facts, the Landlord requires timely possession of the Rental Unit to deal with the Rental Unit's pest issues. LM stated that the Tenant has paid their March 2025 rent, in full.

Considering all the above, I find it appropriate to **grant the Landlord an Order of Possession effective by 1:00 PM on March 31, 2025, after service of the attached Order to the Tenant**.

As the Landlord was successful, I grant the Landlord's application for the recovery of the filing fee from the Tenant, pursuant to section 72 of the *Act*, to be collected in its entirety from the Tenant's security deposit. Following my Order, the Landlord is effectively only holding a $525.00 security deposit, in trust for the Tenant.

In their application and at the hearing, the Tenant identified several items in need of repairs, including the Rental Unit's ceiling paint and "tattered curtains".

The Tenant testified that they never requested repairs to the above items, from the Landlord, in writing.

EY testified that the Tenant never requested repairs to the above items, verbally. EY testified that the only request the Tenant ever made was with respect to a plumbing issue, which the Landlord addressed.

EY testified that in any case, it is impossible to step inside the Rental Unit for the purposes of painting and changing curtains, considering the amount of clutter inside the unit.

Considering all the above, and the fact that this tenancy is ending, I find it is unnecessary to issue any orders respecting repairs. There is insufficient evidence before me that the Landlord was aware of the requested repairs, considering the Tenant's testimony that they never made their requests in writing and the Tenant's testimony that they had a verbal discussion with EY was opposed by EY.

In their application, the Tenant applied for the provision of services or facilities required by the tenancy agreement, but instead they provided evidence of required repairs. The Tenant's application for the former claim is dismissed due to lack of evidence and submissions on the matter, and the Tenant's application for repairs is dismissed for the reasons I identified above.

## Conclusion

The Tenant's application is dismissed in its entirety, without leave to reapply. The Landlord's application for an Order of Possession is granted.

I grant an Order of Possession to the Landlord **effective by 1:00 PM on March 31, 2025, after service of the attached Order to the Tenant**. Should the Tenant or anyone on the premises fail to comply with the Order, the Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

As the Landlord was successful, I grant the Landlord's application for the recovery of the filing fee from the Tenant, pursuant to section 72 of the *Act*, to be collected in its entirety from the Tenant's security deposit. Following my Order, the Landlord is effectively only holding a $525.00 security deposit, in trust for the Tenant.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the *Act*.

Dated: March 5, 2025

Residential Tenancy Branch