



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

CNC, AS, ERP, LRE, LAT, MNDC, PSF

### Introduction

The tenant applied to cancel a 1 Month Notice to End Tenancy for Cause issued on September 25, 2012, for compensation in the sum of \$200.00 as damage or loss under the Act, an Order the landlord make emergency repairs and provide services or facilities required by law; that the landlord's right to enter the unit be limited or suspended and an Order allowing the tenant to change the locks to the rental unit.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered the relevant portions of the landlord's 86 page written submission and the tenant's 32 page written submission.

### Preliminary Matters

At the start of the hearing the landlord's 4 witnesses were indentified. An attempt was made to mute each of the witnesses, but the mute function on the conference call console was not operational, therefore, 3 of the 4 witnesses exited the hearing and were called into the hearing as they were needed. Witness M.V. resides with the building manager; she was on a separate telephone line and exited the hearing until she was required to testify.

The landlord supplied an audio recording as evidence. The recording was stored on a flash drive device and served to the Residential Tenancy Branch (RTB) and tenant. The tenant was not able to listen to the audio submission as she did not have a computer.

Section 11.8 of the Rules of Procedure require the party who submits digital evidence, to ensure that the recipient of that evidence has been able to gain access to the material at least 5 days prior to the hearing. The tenant was not contacted to ensure she had been able to access the material on the flash drive; therefore, that evidence was set aside. The landlord's witness was given the opportunity to provide affirmed testimony in relation to what he had heard on the audio recording.

The tenant stated that a police officer had submitted a letter to the Residential Tenancy Branch (RTB), as evidence in support of her claim. The tenant had not served the landlord with a copy of this letter. I did not have any evidence submission from the police. The tenant suggested that the RTB should have forwarded a copy of this letter to the landlord; I explained that the tenant was responsible for making her own evidence submissions to the RTB and the landlord and that the RTB does not make evidence submissions on behalf of applicants or respondents.

Throughout the hearing I had to warn the tenant that she must cease interrupting. As the mute function of the conference call console was not operational I was unable to mute the tenant; although a number of attempts were made to do so. The tenant was given the opportunity to cross examine the witnesses, by asking questions through me, but the tenant often attempted to provide testimony, rather than ask a question. At times the tenant's questions were not relevant to the matter before me, at which point I would re-direct the tenant, suggesting she ask questions that were relevant to the tenancy and her application.

The tenant indicated a number of matters on her application and confirmed that the main issue to deal with during this proceeding was the Notice to End Tenancy. For disputes to be combined on an application they must be related. Not all the claims on this application were sufficiently related to the main issue to be dealt with together. Therefore, I dealt with the tenant's request to set aside or cancel the Notice to End Tenancy for Cause and I dismissed the balance of the tenant's claim with liberty to re-apply.

#### Issue(s) to be Decided

Should the 1 Month Notice to end Tenancy for Cause issued on September 25, 2012, be cancelled?

#### Background and Evidence

The landlord and the tenant agreed that a 1 Month Notice to End Tenancy for Cause was served on the tenant.

The tenant supplied a copy of the Notice on which she placed a September 27, 2012, notation that the Notice had been placed in her mail box. The tenant also provided a copy of a registered mail delivery Notice she received on September 28, 2012. The delivery notice had been prepared on September 27, 2012. Another copy of the Notice to end tenancy supplied by the tenant indicated that the Notice was posted to her door after 4 a.m. on September 26, 2012.

The tenant applied to cancel the Notice within the required time-frame.

The reasons stated for the Notice to End Tenancy were that the tenant has :

- Significantly interfered with or unreasonably disturbed another occupant or the landlord;
- seriously jeopardized the health or safety or lawful interest of another occupant or the landlord; and
- that the tenant knowingly gave false information to prospective tenant or purchaser of the rental unit.

The tenancy commenced on June 1, 2012; rent is due on the first day of each month.

The landlord explained that there had been 2 previous hearings held; one on July 31, 2012, with a decision issued August 3; and a 2<sup>nd</sup> hearing held on September 11, 2012 with a decision issued on the same date. Both of those hearings had been held as a result of tenant applications to cancel a Notice to end tenancy for cause. Each of the previous Notices related to the same type of problems.

The September 25, 2012 Notice has been given to the tenant as a result of alleged incidents that occurred after September 11, 2012 and is based on new or continued behaviour of the tenant. The effective date of the Notice was October 31, 2012.

The landlord provided a copy of a September 13, 2012 letter issued by witness M.P. The letter indicated that she would vacate her rental unit by the end of September. M.P. provided the landlord with a copy of a letter the tenant had placed on her door in July 2012. The contents of that letter so disturbed M.P. that she decided, after many of years of residency, that she must move out. The letter made numerous accusations against M.P. and alleged she was "helping your friend Romanian Refugee Gypsy to lie and stalk tenants..." M.P. attended the July 31, 2012 hearing as a witness for the landlord.

The landlord said that the letter given to M.P. by the tenant had not been considered at either of the past hearings.

Witness J.G. confirmed he had written the statement dated October 24, 2012. J.G. explained that on September 16, 2012 he was told by the tenant that the landlord had placed hidden cameras in vents and the fire alarms around the building. The tenant also told him that the landlord was entering her unit without the tenant's knowledge.

On either September 22 or 23<sup>rd</sup>, 2012 J.G. was entering the building and met the tenant at the front door. The tenant told J.G. she was starting a petition to have the landlord removed due to the sexual assault of a number of women. As J.G. opened the door to the building some other individuals entered; they said they were there to view a unit. The tenant then told the prospective occupants that the landlord was a serial sex assaulter, and that the unit had bed bugs and cockroaches. J.G. had previously heard the tenant say these kinds of things. Within approximately fifteen minutes the people the tenant had seen in the lobby were shown his apartment, as he was vacating to a larger residence.

Witness M.V. supplied a written statement, which was submitted as evidence. M.V. lives in the rental building with her spouse, who is the building manager. M.V. described an incident that occurred at approximately 10:30 or 11 a.m. on September 19, 2012. M.V. was with her husband, exiting the elevator in the building. The tenant was present and began to yell at her, using threats and swearing. M.V.'s written statement indicated the tenant used the:

*"f" word, called her names: "such as "f.." immigrants, dirty Romania gypsies, junks, jerks who did not have the right to come to Canada, who cannot speak English, who are not able to have a decent job."*

On September 22, 2012, M.V. alleged that an almost identical encounter occurred with the tenant; they met in a hallway of the building and the tenant began to swear at her, make threats, used "dirty" language, "full of hatred, of profanities and bigoted statements." M.V. said that as a result of these encounters with the tenant she no longer has any enjoyment of her home and would like to move, but is unable to do so as her husband's employment requires him to reside in the building he manages.

Witness Y.A. testified that he knows the landlord through his employment as a pest control technician; he provides services in the building. On September 14, 2012, Y.A.'s employer received a telephone call from the tenant; the call was recorded and Y.A. was given a copy of the recording in which he was able to hear the tenant make numerous accusations and statements.

Y.A. said that the tenant told his employer that she no longer wanted him in the unit; her language was vitriolic, inappropriate and racist. The tenant called Y.A. a filthy East Indian, the owner a filthy East Indian and she threatened to complain to her friend, the manager for the City of Vancouver. The tenant called Y.A. a pervert and a leech, alleging that when he worked in her unit he tried rub up against her. The tenant also accused Y.A. of possibly putting cockroaches in the rental building.

Sometime around October 16, 2012, the tenant called the pest control company, Y.A. said that the tenant spoke with the receptionist to complain about him and she again commented, referring to him as a dirty East Indian who likely placed cockroaches in the building.

Y.A. said that he can no longer work in the tenant's unit and that no one else will work in her unit, for fear of these kinds of allegation.

The tenant asked Y.A. if he has missed an appointment; during this exchange the tenant denied Y.A.'s submission. Y.A. responded that she understood the tenant's denial, but that her comments were recorded and were "pretty terrible" things to say.

J.H. supplied a written statement dated September 23, 2012. J.H. testified that on September 22, 2012, he went to the rental unit building to look at a rental unit. When he arrived at the building he met an elderly woman by the entrance. She asked J.H. who

was looking for and he told her he had an appointment to view a unit. J.H. testified that the tenant then started using derogatory language, to speak badly about the manager and advised him to stay away from the building as it had roaches and mice. The tenant also told J.H. that he would regret moving into the building and that the manager would be removed as she had started a petition. When the manager arrived the tenant immediately left the area.

J.H.'s experience with the building manager was positive and he may rent a unit once he views it again in the future.

The tenant asked J.H. "when this bogus conversation had happened." At this point I terminated the tenant's questioning of J.H. as this testimony had been provided.

The landlord submitted a letter dated September 24, 2012, for another potential occupant. The statement indicated that C.T., went to the rental building on September 23, 2012 to meet with the building manager to view a rental unit. She met an elderly woman at the front of the building. The elderly woman made accusations about the landlord, the state of the building and told C.T. that she would regret moving into the building. Once the landlord arrived the woman left the area.

The landlord submitted that the behaviour of the tenant has resulted in significant interference and unreasonable disturbance to other occupants of the building; M.P. who decided to vacate in September and M.V. who must reside in the building with her husband. Further, the landlord believes that their independent witness statements show a pattern of behaviour that supports the reasons given on the Notice; that the tenant is intentionally giving prospective tenants false information.

The tenant testified that the landlord's witnesses have lied and that she never had any of these conversations. The tenant did not directly respond to the allegations, other to deny that the incidents described were untrue. The tenant said that the landlord knows the police have been called, that she is planning on going to the Supreme Court and the "Ombudsman." The tenant said that the landlord comes from Europe; that the landlord is volatile and takes things too personally. The tenant alleged she has been unreasonably disturbed.

The tenant supplied a copy of a September 12, 2012 letter issued by the landlord to her. The letter indicated that the tenant had not succeeded in the hearing held the day prior. The letter was emotional and indicated the landlord had allowed her to move into the building on compassionate grounds. The letter warned the tenant, in part, that further notices ending the tenancy could be given, that the tenant was attempting to extort money from the landlord, that her credibility had suffered and that the tenant should cease harassing the landlord. The letter concluded that the landlord would do his best to solve real or false problems as long as the tenant agreed to comply with the rules, which were provided to the tenant. The tenant was warned if she did not comply she would be evicted. The landlord acknowledged writing this letter, in part, out of

frustration; there was no dispute that the letter was inflammatory, but that it needed to be considered in the context of the hearing held the previous day.

The tenant supplied copies of notices to all tenants, informing them of refuse and recycling processes, the presence of video cameras and the need to enter the unit for fire and smoke alarm inspections. The tenant supplied documents referencing criminal harassment and an Ontario Court decision.

At the conclusion of the hearing the landlord offered the tenant \$300.00 if she would vacate the unit within 5 business days. The tenant did not wish to accept this offer.

The landlord requested an Order of possession.

### Analysis

The tenant has applied to cancel a Notice ending tenancy for cause issued on September 25, 2012; the effective date of the Notice was October 31, 2012.

I find that effective September 29, 2012 the tenant was served with the Notice. The tenant's evidence indicated the Notice was posted to her door after 4 a.m. on September 26, 2012; therefore, pursuant to section 90 of the Act, I find the tenant was served 3 days later. However, there was evidence before me that on September 27, 2012, the tenant had made notations on a copy of her Notice.

Therefore, I find that the effective date of the Notice is October 31, 2012.

In a case where a tenant has applied to cancel a Notice for cause Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

After considering all of the written and oral submissions and photographs submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- knowingly gave false information to prospective tenants.

In consideration of the reasons given on the Notice ending tenancy, I have based on my assessment, in part, on the meaning of the terms upon which the Notice was issued.

I have referenced ***Black's Law Dictionary, sixth edition***, which defines interfere, in part, as:

“To check; hamper. Hinder; infringe; encroach; trespass; disturb...to enter into, or take part in, the concerns of others.”

I have considered the incidents described by the witnesses, combined with the tenant's assertion that she never talked to any of those individuals and that their submissions were untrue. In the circumstances before me, I find the version of events provided by the landlord and the witnesses to be highly probable given the conditions that existed at the time. Considered in its totality, I favoured the evidence of the landlord over the tenant.

The witnesses did not know each other, were not related and several were not tenants in the building. There was no evidence to support any collusion on the part of the witnesses. I found that their testimony and written submissions had the ring of truth. I placed less weight on the 1 written submission from C.T.; as she was not available at the hearing, however; I accept her statement as being consistent with the other evidence supplied by the witnesses who gave affirmed testimony.

I considered the incident described by the landlord's spouse and found her testimony reliable and consistent. M.V. is so distraught that she would prefer to vacate the rental unit, but she is bound to remain as her spouse must live in the building as a condition of his employment. M.V.'s testimony was consistent with that given by Y.A., who is now unable to provide pest control services to the tenant's unit, as a result of her accusations, which I find, on the balance of probabilities, were made as described by Y.A.

I also considered the testimony of 2 independent witnesses; one a tenant at the time; the 2<sup>nd</sup> a potential tenant. Each described the tenant giving what I find was prejudicial information about the building to potential occupants. Witness J.G. heard the tenant tell potential renters that the landlord was a serial sex offender. The tenant provided no evidence to support such a very serious allegation.

I have rejected the tenants claim that all of the witnesses have essentially fabricated their written statements and lied during the hearing. The tenant's submission does not stand up to the evidence and witness submissions.

Therefore, I find that the tenant's application is dismissed.

Section 55(1) of the Act provides:

**55** (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

*(a) the landlord makes an oral request for an order of possession, and*

*(b) the director dismisses the tenant's application or upholds the landlord's notice.*

Therefore, as the tenant's application is dismissed and the landlord has requested an Order of possession, the landlord has been granted an Order of possession that is effective **two days after it is served upon the tenant**. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

### Conclusion

The portion of the tenant's application requesting cancellation of the 1 Month Notice to End Tenancy for Cause is dismissed. The balance of the tenant's application is dismissed with leave to reapply.

The landlord has been issued an Order of possession.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: November 08, 2012.

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Residential Tenancy Branch