



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SANFORD HOUSING SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC, MNSD, O, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for:

- an Order of Possession for Cause pursuant to section 55;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of any monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 9:47 am in order to enable the tenant to connect with this teleconference hearing scheduled for 9:30 am. The landlord's representative ("the landlord") attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions.

The landlord testified that the 1 Month Notice to End Tenancy for Cause ("the 1 Month Notice") was served to the tenant on March 16, 2015 by both posting it on his rental unit door and sending a copy by registered mail. The landlord testified that her Application for Dispute Resolution package with Notice of Hearing was served to the tenant on April 13, 2015 by registered mail. The landlord submitted receipts and Canada Post tracking numbers with respect to both mailings. Based on the landlord's sworn undisputed testimony and pursuant to section 88, 89 and 90 of the Act, I find the tenant deemed served with the 1 Month Notice on March 21, 2015 and with the landlord's Application for Dispute Resolution on April 18, 2015, each 5 days after their registered mailing.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for Cause? Is the landlord entitled to retain all or a portion of the tenant's security deposit towards any monetary award?  
Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

This tenancy began on November 1, 2013 on a 6 month fixed term basis. A second fixed term began on May 16, 2013. The landlord testified that she does not believe the tenant has vacated the rental unit at this time. The landlord testified that she continues to hold a \$300.00 security deposit paid by the tenant at the start of his tenancy. She also testified that she holds a pet damage deposit of \$100.00. The landlord applied to retain both deposits at the hearing although her application sought only the \$300.00 security deposit.

The landlord provided documentary evidence including a copy of the residential tenancy agreement signed by both parties, a copy of the 1 Month Notice as well as incident reports from front desk staff at the residence with respect to the tenant. The 1 Month Notice identifies two grounds within section 47 of the *Act* upon which the landlord relies to end the tenancy;

- 47 (e) 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,
  - (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 incident reports prepared by staff of the rental premises and submitted for evidence in this hearing included a type written report documenting an event when a third party known to the staff entered the residential premises without authorization. Shortly thereafter, another resident reported to the staff that she has been assaulted by this third person at the direction of the tenant. According to the written report dated February 20, 2015, the police attended and the tenant was arrested.

Other documentary material submitted by the landlord includes;

- November 18, 2014 warning letter indicating that the tenant was observed spraying another tenant with pepper spray;
- September 30, 2014 internal staff notice indicating that graffiti was found on elevator; and
- September 5, 2014 landlord notice indicating tenant must ask his long term guest to leave to be in compliance with housing rules.

The landlord testified that the graffiti found in the elevator is the same graffiti that is prolific within the tenant's own unit. The landlord testified that she sought to retain the tenant's security deposit because of the extensive damage done by the tenant in putting graffiti in the entire rental unit as well as causing other damage within his rental unit and to the common areas of the residential premises.

The landlord issued a 1 Month Notice for Cause to the tenant. The tenant did not attend the hearing and did not apply to dispute the notice within the 10 days provided under the *Act*. After the expiration of that 10 Day period to respond, the landlord made an application for an Order of Possession and to retain the tenant's security deposit as well as recover the fee for this application. The landlord testified, with supporting documentary evidence that the tenant has created damage within the rental unit and throughout the residential premises. Further, the landlord testified that the other residents on the premises feel unsafe while the tenant resides in the building. She provided sworn undisputed testimony that one tenant was assaulted as a result of the tenant's illegal actions and those actions resulted in the tenant's arrest.

### Analysis

Pursuant to Residential Tenancy Policy Guideline No. 40,

The term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.

The party alleging the illegal activity has the burden of proving that the activity was illegal. Thus, the party should be prepared to establish the illegality by providing to the arbitrator and to the other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw.

According to the Policy Guideline, the party making an allegation of illegal activity has the burden of proving the activity was illegal. The decision maker will determine whether or not the illegal activity is serious enough to warrant the end of the tenancy, taking into consideration factors including the interference of quiet enjoyment of other occupants and the extent of damage to the landlord's property. The illegal activity must impact the tenancy to warrant an end to that tenancy.

The test for establishing that the activity was illegal and thus grounds for terminating the tenancy is not the criminal standard which is proof beyond a reasonable doubt. A criminal conviction is not a prerequisite for terminating the tenancy. The standard of proof for ending a tenancy for illegal activity is the same as for ending a tenancy for any cause permitted under the Legislation: proof on a balance of probabilities. (Policy Guideline No. 40 – emphasis added)

I find the landlord has provided sufficient proof to support the issuance of a 1 Month Notice to End Tenancy. The landlord provided documentation by staff of events at the residence, she provided sworn undisputed testimony with respect to the actions and resulting arrest of the tenant and she provided evidence that supported his behaviour in damaging the premises.

Based on the landlord's sworn undisputed evidence, I am satisfied that the landlord had sufficient grounds to issue the 1 Month Notice and obtain an end to this tenancy for cause. The tenant has not made application pursuant to section 47(4) of the Act within ten days of receiving the 1 Month Notice. There is a conclusive presumption that, if the tenant fails to dispute the 1 Month Notice within the 10 days, in accordance with section 47(5) of the Act, the tenancy is presumed to end on the effective date of the notice. In this case, the effective date of the landlord's 1 Month Notice was April 30, 2015. As the tenant has not vacated the rental unit as of the date of this hearing, I find that the landlord is entitled to a 2 day Order of Possession

The landlord testified that she continues to hold a security deposit of \$300.00 and a pet damage deposit of \$100.00 paid by the tenant at the start of his tenancy. The landlord's application with respect to retention of the security deposit is premature in that the tenant has not vacated the rental unit and that the landlord is not in a position to sufficiently assess or establish the costs of any damage to the premises. I dismiss the landlord's application to retain the security and pet damage deposits with leave to reapply.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application. To recover this fee, I allow the landlord to reduce the tenant's security deposit by \$50.00.

Conclusion

I grant the landlords an Order of Possession to be effective two days after notice is served to the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I dismiss the landlord's application to retain the security and pet damage deposits with leave to reapply.

I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application. To recover this fee, I allow the landlord to reduce the tenant's security deposit from \$300.00 to \$250.00.

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 26, 2015

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Residential Tenancy Branch

