



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

CNC RR CNR FF

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, submitted to the Residential Tenancy Branch on May 20, 2016, and amended by an Amendment to an Application for Dispute Resolution, received at the Residential Tenancy Branch on June 3, 2016 (the "Application").

The Tenant has applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"): an order cancelling a 1 Month Notice to End Tenancy for Cause, dated May 15, 2016 (the "1 Month Notice"); an order allowing the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided; an order cancelling a 10 Day Notice for Unpaid Rent or Utilities, dated May 27, 2016 (the "10 Day Notice"); and an order granting recovery of the filing fee.

The Tenant and the Landlord both appeared at the hearing on their own behalf. The parties provided their solemn affirmations.

It was confirmed during the hearing that both parties had received the documentary evidence upon which the other intended to rely. No issues were raised by the parties with respect to the documentary evidence.

The Tenant advised the Application and the Notice of Dispute Resolution Hearing were served on the Landlord by registered mail on May 27, 2016, and that the Amendment to an Application for Dispute Resolution was served on the Landlord by registered mail on June 1, 2016. The Landlord confirmed receipt.

The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer to only the relevant facts and issues in this Decision.

### Preliminary and Procedural Matters

Several orders are being sought by the Tenant, as summarized above. Rule 2.3 of the Residential Tenancy Branch Rules of Procedure permit an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most important issue in the Tenant's Application is whether or not the tenancy will continue. Accordingly, I find it appropriate to exercise my discretion to dismiss all but the Tenant's application to cancel the 1 Month Notice and the 10 Day Notice, with leave to reapply at a later date.

### Issues to be Decided

Is the Tenant entitled to an order cancelling the 1 Month Notice?

Is the Tenant entitled to an order cancelling the 10 Day Notice?

Is the Tenant entitled to recover the filing fee?

### Background and Evidence

Included with the documentary evidence was a copy of the tenancy agreement between the parties. It confirmed a month-to-month tenancy commenced on February 15, 2016. Rent in the amount of \$1,250.00 is due on the last day of each month, and is to be applied to the following month. The rent payment does not include water, electricity or heat. The Tenant provided the Landlord with a security deposit in the amount of \$625.00 at the beginning of the tenancy.

The Landlord provided oral testimony about service of the 1 Month Notice. She advised, and the Tenant confirmed, that the 1 Month Notice was served on the Tenant's roommate during a scheduled walk-through inspection of the rental unit on May 15, 2016. The Tenant confirmed receipt on that date.

The Landlord outlined a number of issues that have arisen during the tenancy, which resulted in the 1 Month Notice being issued. First, the Landlord provided oral testimony suggesting the Tenant or her roommate damaged a recently-installed boiler. There have been four such instances of what appears to be deliberate damage. On each occasion a repair person was called to perform the repairs at considerable expense to

the Landlord. Photographs of damage to the boiler were provided with the Landlord's documentary evidence.

The Tenant denied damaging the boiler and, as part of her Application, seeks to have rent reduced for the associated loss. The Tenant stated that the police were investigating the damage to the boiler, but that her name is no longer on the police file. As noted above, that aspect of the Tenant's Application will not be considered here.

Second, the Landlord stated the Tenant is difficult to communicate with and does not respond to phone calls, messages or letters. The Landlord added that the Tenant ignores her when she attends the residential property. The Landlord says she has been asked by the Tenant to communicate only by regular mail.

The Tenant denied being difficult to communicate with. However, she stated she has commenced legal proceedings against the Landlord for harassment and "character assassination". The request that the Landlord communicate in writing was made on the advice of the Tenant's legal counsel.

Third, the Landlord advised that the Tenant installed a lock at the beginning of the tenancy and refuses to provide the Landlord with a copy of the key.

In the Tenant's written submissions, the Tenant stated that locks were installed and re-keyed with the Landlord's consent, and that the Landlord has had a key since April 2, 2016, which the Landlord denies.

Fourth, the Landlord provided oral testimony that the Tenant refuses to permit access to the rental unit, despite notice being given in accordance with the *Act*.

As an example, the Landlord described an incident where her husband was advised by police that the entrance to the upstairs rental unit was left open. The Landlord's husband and son attended to investigate and secure the upstairs rental unit. According to the Landlord, the Tenant became mad at the Landlord's husband and son, yelling at them and claiming they were not entitled to be on the residential property without an appointment.

In her written submissions and oral testimony, the Tenant stated that access to the rental unit has never been denied.

Fifth, the Landlord gave oral testimony suggesting the Tenant interferes with the upstairs tenants. According to the Landlord, the Tenant advised the upstairs tenants there are needles in the back yard, which the Landlord says is untrue.

In response, the Tenant stated the concern was communicated to them because they have a child, and because the back yard is overgrown. The Tenant herself says she will not use the back yard.

Further, the Landlord's written submissions described an occasion where the Tenant invoiced the Landlord \$300.00 for storing paint supplies in the garage, although it had previously been agreed that the items could be stored there.

The Landlord stated she no longer trusts the Tenant and that the tenancy needs to end due to the stress she experiences.

The Tenant also expressed concern about the payment of utilities. The Landlord says rent is divided 50:50 with the upstairs unit. The Tenant does not object to paying 50% of the utility bill, but would prefer to pay based on actual consumption, rather than an equalized payment amount.

### Analysis

In light of the oral and documentary evidence submitted by the parties, and on a balance of probabilities, I find:

Section 47 of the *Act* permits a landlord to end a tenancy for cause if the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

Based on the oral testimony of both parties, I find the Tenant was duly served with the 1 Month Notice on May 15, 2016.

The Landlord has provided evidence to suggest, and I find, that the Tenant has refused to communicate with the Landlord and has been unwilling to allow access to the residential property or the rental unit. It is not disputed that the Tenant has made serious allegations of harassment and "character assassination", and has commenced related legal proceedings against the Landlord.

The Tenant denies the Landlord's allegations. She wishes to remain in the rental unit, as long as an agreeable arrangement can be made with respect to payment of utilities.

Based on the above, I find the Tenant's actions have significantly interfered with or unreasonably disturbed another occupant or the Landlord.

Accordingly, the Tenant's application with respect to cancelling the 1 Month Notice is dismissed.

When a tenant's application is dismissed, section 55 of the *Act* requires that I issue an order of possession in favour of the landlord if the notice complies with section 52 of the *Act*. Having reviewed the 1 Month Notice, I find it complies with section 52 of the *Act*. Accordingly, I grant the Landlord an order of possession, which will be effective on June 30, 2016, at 1:00 p.m.

As I have concluded the tenancy will end based on the 1 Month Notice, it is not necessary for me to consider the 10 Day Notice further in this Decision.

As the Tenant's Application has not been successful, I decline to grant an order permitting the Tenant to recover the filing fee.

### Conclusion

The Tenant's Application is dismissed.

By operation of section 55 of the *Act*, the Landlord is granted an order of possession, which will be effective June 30, 2016, at 1:00 p.m. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

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: June 24, 2016

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Residential Tenancy Branch