



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

CNC

### Introduction

The tenant has applied to cancel a one month Notice to end tenancy for cause that was issued on September 26, 2016.

The tenants' agents attended the hearing on behalf of the tenant. The landlords' agent was present. At the start of the hearing I introduced myself and the participants. The hearing process was explained 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.

The agents for the tenant are referred to as "tenant" or "tenants' agents" throughout the decision.

### Issue(s) to be Decided

Should the one month Notice ending tenancy for cause issued on September 26, 2016 be cancelled or must the landlord be issued an order of possession?

### Background and Evidence

The tenancy commenced on April 6, 2015. Rent is due on the first day of each month. A copy of the tenancy agreement was supplied as evidence. The parties agreed that the tenant is an individual who suffers from severe mental illness. The agents act as professional support to the tenant. The tenant resides in this supportive housing complex that includes 56 bachelor suites for people who are homeless or at risk of homelessness; many of whom deal with mental illness and/or addiction issues.

The landlord and the tenant agree that a one month Notice to end tenancy for cause was served on the tenant indicating that the tenant was required to vacate the rental unit on October 31, 2016.

The reasons stated for the Notice to end tenancy were that the tenant or a person permitted on the property by the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord; and

- that the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful interest of another occupant or the landlord.

The landlord said that the first reason on the Notice related to an incident where the tenant made inappropriate sexual remarks toward a female staff member. This was a violation of Worksafe BC law. No incidents of this nature have been repeated. The landlord said that the main issues of concern related to health and safety or lawful right of another occupant or the landlord.

Since the start of the tenancy the tenant has had difficulty maintaining an acceptable level of cleanliness in the rental unit. The tenants' illness fluctuates and at times the tenant has been successful in responding to intervention. The tenant is provided support by housing staff who, on multiple occasions have determined the unit was in an unsafe condition.

The landlord provided copies of letters of warning issued to the tenant throughout the tenancy.

On November 9, 2015 the tenant was warned that his unit was a bio-hazard and that fire safety issues were a concern. The tenant is a chain smoker; he smokes cigarettes and then will drop the cigarette to the floor of the unit.

From November 9, 2015 to September 26, 2016 the tenant has been issued 21 letters of warning. Letters issued on January 27, March 4, 11, 13, 29; April 5, 6 and May 31 and August 16, all indicated the unit had been inspected and found to be in an unacceptable condition that could cause sanitation and maintenance problems. The tenant is warned to put the unit in a sanitary condition with a subsequent inspection date provided.

On April 20, 2016 the tenant was informed that during an inspection on that date cigarettes were found on the floor that had not been extinguished, close to furniture. The tenant was warned he could be evicted if this continued.

On May 13, 2016 the landlord issued a letter to the tenants' community treatment team, expressing concerns around fire safety and the condition of the tenants' unit. The landlord set out concern regarding cigarette burns, some near flammable material and around the mattress and bedding. The landlord expressed a desire to see improvements and explained that the unsafe smoking could lead to an end of the tenancy as the risk of continuing would be too great. On the same date the landlord issued the tenant a warning in relation to the high risk state of the rental unit. The tenant was also issued a second letter setting out safety awareness regarding potential fire sources caused by cigarettes on the floor, near the tenants' chair and next to the bed and other flammable material.

On May 18, 2016, after release from hospital, the tenant signed an agreement to allow the landlords' tenant support staff to assist the tenant in maintaining the rental unit. The tenant signed acknowledging that support staff would knock on his door at 11 a.m. every week day and ask the tenant to allow them to assist in removing hazards. The tenant was warned that if he did not comply in keeping the unit reasonably clean the tenant could be evicted. The landlord attempted to have the tenant cooperate with maintenance of the unit in order to avoid eviction. The agreement supplied as evidence indicated the tenant agreed to work with landlords' staff in an attempt to keep the unit reasonably

clean and that if the tenant smoked he would ensure butts were extinguished in an ash tray.

On June 1, 2016 the tenant was issued a letter of warning in relation to comments made to a female staff member. The tenant was warned if that behaviour was repeated the tenancy could end. The tenant was also warned that he must comply with the Act in relation to maintaining health, cleanliness and sanitary standards in the unit.

On June 18, 2016 the tenant was given written warning that he had been asked on many occasions to smoke safely. Several inspections had found cigarette butts piled up or on the floor, still lit and burning holes into the linoleum. The tenant was informed that the second most common cause of apartment fires is smoking.

On August 19, 2016 the tenant was warned that the unit was in serious condition with food, vomit, trash and piles of cigarette butts on the floor. The landlord reminded the tenant that the tenant had not been accepting the offer of assistance and that on two occasions staff had to leave the unit as it was unsafe and the tenant would not participate in cleaning with the staff. The tenant was warned the tenancy could end. The tenant was also informed that staff would assist but could not complete housekeeping for the tenant. The support staff was willing to show the tenant how to clean so he could improve his housekeeping skills.

Letters were issued on August 23, 24, 25, 26, and September 2, 6; 2016. all identical warnings. The tenant would not come to the door on some of those dates, to allow support workers to assist the tenant in meeting the housing standard required.

On August 25, 2016 the tenant was issued a Fire and Safety Hazard letter. The letter indicated the tenant had worked with staff on that date in an attempt to clean the unit. However, staff became more concerned about potential fire and safety hazards as it was apparent the tenant was not using an ashtray. Staff reported burn marks on the floor, furnishings, bedding and the tenants' clothing. The landlord insisted the tenant cease smoking in bed and that he begin to use an ashtray. The tenant was warned he could be evicted if he did not use an ashtray.

On August 31, 2016 a letter was issued to the tenant setting out the same concerns set out in the August 25, 2016 letter. The landlord had provided the tenant with tins filled with clay that could be used for cigarettes.

Photos taken in the unit in August 2016 show what the landlord described as cigarette burns in the linoleum. A large area of dried vomit and garbage is shown on the floor.

The tenants' agents responded that if evicted the tenant will become homeless. There was no dispute that smoking is a concern. The tenant has made efforts to use the cans supplied by the landlord. The support team members see the tenant three times each week and there is the likelihood that increased visits can be arranged. The tenant has family support and they are willing to provide funds for additional services.

The tenants' agents pointed out that the floors in the unit are fire retardant treated and that butts on the floor should not cause undue risk. In theory risk may be a concern, but in practice there should not be any concern. The unit has a sprinkler system, should a fire ever occur. The tenants' agents do not believe the risk is as severe as the landlord

believes it is. Within the next 10 to 12 months alternate housing will be available for the tenant and he will vacate.

The landlord responded that the sprinkler system does work but that when it is triggered up to five units can be damaged, resulting in disruption and cost. The landlord said that recently the tenant has made some improvements, but cigarette butts continue to be found on the floor, rather than in the cans provided.

### Analysis

When a tenant applies to dispute a Notice ending tenancy the landlord has the burden of proving the reasons given on the Notice.

The landlord did not focus on the first reason given on the Notice and chose to set out cause related to seriously jeopardizing the health or safety or lawful right of another occupant or the landlord.

The landlord provides housing to individuals who suffer from mental health and addiction issues. The landlord explained they are well-aware of the challenges faced by the tenant. The tenants' agents at the hearing advocated for the tenant in an attempt to maintain housing for this high-need individual.

I must weigh the landlords' submission against that of the tenants' agents and make a determination, on the balance of probabilities, if the reason given on the Notice supports ending the tenancy.

From the evidence before me I find that the single most urgent concern is related to the disposal of cigarettes. The landlord has given the tenant many warnings and offers of support, in the hope that the tenant would cease leaving cigarette butts on the floor. I take note that any reasonable person would accept that putting any cigarette butts on the floor; some of which I find were not extinguished, would seriously jeopardize the safety of other occupants of this multi-unit building. Photographs showed many burn marks on the flooring, which leads me to accept that the tenant is not taking the safety of others into account. The tenant may not be in a state where the full potential impact of his behaviour is obvious, but any lack of awareness on the part of the tenant does not outweigh the landlords' obligation to protect the safety of all occupants of this multi-unit building.

Even if the tenant has improved somewhat by placing fewer cigarette butts on the flooring I find that a risk continues to exist. The possibility of fire caused by a cigarette butt being left by a combustible material is not a risk that a landlord must accept. After multiple warnings and attempts to address the concerns with the tenant, I find that the tenant continues to display behaviour that seriously jeopardizes the safety of other occupants.

Therefore, I find that the tenants' application is dismissed and that the one month Notice ending tenancy for cause issued on September 26, 2016 is of full force and effect.

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 to the landlord an order of possession of the rental unit if*

*(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and  
(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

Therefore, as the tenants' application is dismissed I find that the landlord must be issued an order of possession.

The landlord has been granted an order of possession that is effective two days after service to 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 application is dismissed.

The landlord is entitled to an order of possession.

This decision is final and binding 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 29, 2016

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Residential Tenancy Branch