



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CITY OF VANCOUVER and  
[tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **CNC, AAT**

### **Introduction**

This hearing was reconvened after the issuance of an interim order dated April 3, 2020. On that day, the hearing was adjourned by consent of the parties, following the tenant's application to adjourn. The tenant had applied pursuant to the Residential Tenancy Act ("Act") for:

- an order to cancel a One Month Notice To End Tenancy for Cause pursuant to sections 47 and 55; and
- An order to allow access to the tenant or their guests pursuant to section 30.

The tenant attended today's hearing and the landlord was represented at today's hearing by property manager, RY ("landlord").

### **Preliminary Issue**

At the commencement of the reconvened hearing, the tenant sought a further adjournment of his application, citing the inability to access libraries, obtain a lawyer or an advocate, or connect with representatives of the Residential Tenancy Branch. I asked the tenant what steps he took since the adjournment of April 3<sup>rd</sup> to prepare for this hearing as I instructed him to do. The tenant testified he couldn't get legal information because the libraries were closed. He said he couldn't contact a lawyer however he acknowledged he hadn't called any by phone, or looked any up, stating they are all closed. No attempts at seeking counsel or advocacy were presented for the application to adjourn. The tenant also stated he couldn't connect with the Residential Tenancy Branch, saying he called several times. He acknowledges he was able to speak to a representative of the Residential Tenancy Branch one time, today.

The landlord submits that the tenant filed his application on January 30<sup>th</sup> and has had until now (May 26<sup>th</sup>) to prepare for this hearing. It is unfair for the landlord to hold this

rental unit vacant pending the outcome of a further adjourned hearing. The landlord was unwilling to consent to a further adjournment.

The Residential Tenancy Branch Practice Directive 2020-02 issued on March 30, 2020 states:

*In the event parties do not mutually agree to reschedule the hearing, Rule 7.8 allows the arbitrator to adjourn a hearing to another date and Rule 7.9 sets out the criteria for the Director to consider when determining whether to grant an adjournment...*

...

*An arbitrator may adjourn the matter to another date if necessary, to ensure parties are given a fair opportunity to be heard or to submit relevant evidence, or the arbitrator may deny the adjournment and proceed with the hearing.*

I considered Rule 7.9 of the Residential Tenancy Branch Rules of Procedure, establishing the criteria for determining the tenant's request.

1. the likelihood of the adjournment resulting in a resolution;
2. the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
3. whether the adjournment is required to provide a fair opportunity for a party to be heard; and
4. the possible prejudice to each party.

I determined:

1. The adjournment was unlikely to result in a resolution
2. The dispute resolution hearing had previously been adjourned for the tenant to obtain the advocacy he requested, and the tenant has not demonstrated any meaningful attempts at finding the resources he sought. I determined the tenant's need for the adjournment arose from his own neglect or intentional actions.
3. Both parties were capable of providing testimony; both parties provided documentary evidence to support their respective positions. Both parties had an equal opportunity to testify, call witnesses and present evidence.
4. The landlord's position would be greatly prejudiced if I were to adjourn the hearing. The rental unit would remain vacant, depriving the landlord from re-renting it and obtaining rent while awaiting a further reconvened hearing.

Based on the above determinations and examination of the criteria for adjournment, I found that the tenant did not make any meaningful attempt to obtain counsel or find an advocate between the time the original hearing was adjourned and this one was reconvened. I denied the tenant's request for an adjournment.

Issue(s) to be Decided

Should the One Month Notice To End Tenancy for Cause be upheld or cancelled?

Background and Evidence

The landlord gave the following testimony. The tenancy began on November 1, 2017. This is a subsidized housing unit where tenants pay 30% of their income as rent. Currently, the rent is \$472.00 per month. A copy of the tenancy agreement was provided as evidence by the landlord. Article 10.2 of the tenancy agreement states: *the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.*

There have been ongoing issues with the tenant accumulating items in his rental unit since moving in. The landlord provided a letter dated August 27, 2018 which advises the tenant had until September 7, 2018 to clean it up. Attached to this letter given to the tenant was a legal notice issued by the city inspector dated August 20<sup>th</sup> which states the tenant's room is not being kept in a clean and sanitary condition.

On January 9, 2020, a Notice of Violation from the city's fire and rescue services was served to the landlord. This Violation Notice requires all means of egress and access to exits be clear and free of any obstructions at all times; Hoarding: reduce fuel load in unit by 75%; maintain egress/access pathways in and out of the unit. **\*14 days to comply\*, next inspection Jan. 23, 2020 @ 1:30.** The landlord testified that on January 10<sup>th</sup>, he personally served the Violation Notice to the tenant together with a letter from the landlord which states, in part,

*As per your unit inspection by the [city] Fire Department on January 9, 2020, your unit was found in such a state that it is unacceptable and hazardous to tenants in the building and to yourself as well. Your unit has extreme collection of possessions, blocked entryways, damaged or dangerous use of appliances and pest infestation that have been identified as health and safety risks and require your immediate intervention. The Fire Department has issued the Notice of Violation to*

*reduce your possession by 75% and comply with the intended and designated use of the space. **The unit will be re-inspected by the Fire Department on or prior January 23<sup>rd</sup>.** (emphasis added)*

*We would like to remind you, that as a Tenant, you are required to remain compliant with the Tenancy Agreement which you signed. Currently you are in breach of your responsibility to uphold reasonable health and safety standards within the residential property and which requires your immediate attention and action to rectify...*

*...*

*Failure to comply with the Notice of Violation instructions and your tenancy agreement will result in One Month Notice To End Tenancy for Cause being served as per section 47 of the Residential Tenancy Act.*

Photos taken on January 9<sup>th</sup> when the fire department examined the rental unit were provided as evidence by the landlord.

On January 23<sup>rd</sup>, the fire department came back to reinspect the unit. Photos of that inspection were provided by the landlord as well. An order pursuant to the city's fire by-law was issued on January 23<sup>rd</sup> because the inspection revealed accumulation of excessive combustibles and blocked or restricted means of egress. An immediate compliance order was issued to comply with the provisions of the bylaw. The fire prevention inspector issued a Legal Notice Unsafe Condition DO NOT OCCUPY order on that day and posted it to the tenant's door.

On January 24, 2020, the tenant personally served the tenant with a One Month Notice To End Tenancy for Cause which the tenant acknowledges receiving on that day. The effective date on the Notice is February 29, 2020. The reasons for ending the tenancy are:

- 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 or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property;

- 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 testified the tenant was moved to another facility in an adjacent neighbourhood where he is now receiving assisted care. A company was hired to remove the accumulations in the tenant's room on February 14, 2020; photographs taken during the removal were provided as evidence by the landlord. The rental unit has been left vacant pending the outcome of this arbitration hearing and the landlord has been unable to house other people requiring this subsidized housing unit until this arbitration has been decided.

The tenant provided the following testimony. He was told the fire department would be back on January 24<sup>th</sup> to inspect his unit. They came early and unexpectedly. The tenant submits he should have had 10 days to clean it up. He went and asked one employee (he doesn't know who) for an extension and he didn't get it. Other people get extensions to clean up their rooms, yet other people don't get inspections. He didn't have enough time to clean it up before the fire department came back to inspect.

The tenant didn't get any warning or complaints from anyone. He wasn't told his room was a problem. It wasn't looked at or inspected for one year for being dirty or other stuff. There was no warning his room was in bad condition. The tenant testified he has a monetary order for \$35,000.00 against the city and because of this order, the landlord evicted him. No evidence of an arbitration award was provided as evidence by the tenant, despite the tenant asking me to look it up.

The tenant repeatedly testified he was told at a meeting he had with the 'director' that the city would try to get an order of possession before the inspection on January 27<sup>th</sup>. I questioned the tenant regarding this testimony, pointing out the inspection took place on January 23<sup>rd</sup>, however the tenant persisted in repeating his assertion that the 'director' wanted an order of possession before the inspection.

The tenant sought to call the 'director' as a witness, and the landlord complied by having his superior, the Director of Housing for the city, JB call in as a witness. JB testified that she does not have specific memory of a meeting with this tenant on January 13<sup>th</sup>, however there were several meetings with the tenant prior to the notice to end tenancy being served. During these meetings, the director advised the tenant of the severity of the situation if he didn't 'course correct' by decluttering and decrease his stockpiles and collections that there would be limited choices left for the tenant. If the inspection determined the tenant's unit were uninhabitable, there would be no choice

but to end the tenancy. The tenant's unit was unsafe for both the tenant and other tenants in the building due to the cockroaches that were breeding in the tenant's unit. Cockroach nests were being built outside the walls of the tenant's unit indicating an infestation that could not be contained within. The witness recalled that during one meeting with the tenant, a cockroach left his body and had to be killed by the director.

### Analysis

The parties agree the tenant was personally served with the One Month Notice To End Tenancy for Cause on January 24, 2020. I accept this, and find service took place on this date in accordance with section 88 of the *Act*. Section 47 of the *Act* provides that upon receipt of a Notice to End Tenancy for Cause, the tenant may, within ten days, dispute it by filing an application for dispute resolution with the Residential Tenancy Branch. The tenant filed his application on January 30<sup>th</sup>, within the ten days.

If the tenant files the application, the landlord bears the burden to prove he or she has valid grounds to terminate the tenancy for cause. The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the any of the reasons identified in the Notice.

The landlord claimed the reasons for ending the tenancy are:

- 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 or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property;
- breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;

I have reviewed the photographs of the tenant's unit taken on January 9<sup>th</sup> during the first fire inspection and compared them with those taken on January 23<sup>rd</sup>. Both sets of photos depict an unhealthy and unsanitary living condition that would understandably cause the fire department concern for both fueling a fire and preventing escape should a fire erupt. I am satisfied that at the time the Notice was served upon the tenant, the tenant has put the landlord's property at significant risk and seriously jeopardized the health or safety of the other occupants of the building.

While the tenant argues that he didn't have enough time to clean and declutter his rental unit and that the landlord acted unfairly in not giving him an extension to do so; I find the landlord acted within their prerogative right in safeguarding the lawful rights of the other occupants of the building. Although the tenant may feel the landlord acted unfairly in not giving him an extension to clean up, the landlord is under no obligation to grant such an extension to the tenant. The landlord acted in the best interest of the other residents of the building to keep them safe.

Second, the tenant claimed he didn't know the fire department would come on January 27<sup>th</sup> to inspect his unit. I find this argument is unreasonable as the letter from the landlord dated January 10<sup>th</sup> clearly indicates the fire department would return on January 23<sup>rd</sup> to conduct a second inspection.

Despite the tenant's argument that he thought he had more time to clean and declutter, I am satisfied that the landlord provided the tenant with written notice to correct the material term of the tenancy agreement, namely that the tenant must *maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access*. I am satisfied that the tenant failed to do so and was in breach of section 32 of the *Act* and a material term of the tenancy agreement.

The tenant bases his second argument on his understanding that he was told by the director that the city would try to get an order of possession on January 27<sup>th</sup>. Despite my asking the tenant repeatedly what he meant by this (asking him to clarify if he meant the second fire inspection was to take place on the 27<sup>th</sup> instead of the 23<sup>rd</sup>) the tenant clearly indicated that was not the case. The tenant provided unclear, inconsistent and nonsensical testimony regarding this argument. I find this argument holds no merit.

The landlord has proven the reasons for ending the tenancy as stated on the Notice are valid. I uphold the Notice dated January 24, 2020 in accordance with section 47 of the *Act*.

Section 55 states 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 to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I have examined the Notice and find it complies with form and content provisions of section 52. The landlord is entitled to an Order of Possession. As the effective date stated on the Notice has passed, the Order is effective 2 days after service upon the tenant.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on 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 *Residential Tenancy Act*.

Dated: May 28, 2020

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Residential Tenancy Branch