



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FFT, OLC, MNDCT, RP, RR

### Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the tenant served the landlord with the notice of hearing package via Canada Post Registered Mail on August 25, 2020. Both parties confirmed the tenant served the landlord with the submitted documentary evidence by placing it in their mailbox. Both parties confirmed the landlord served the tenant with their submitted documentary evidence via Canada Post Registered Mail on October 2, 2020. Neither party raised any service issues. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the Act.

### Preliminary Issue(s)

At the outset, the tenant's application requests were clarified. The tenant besides seeking an order to cancel the notice to end tenancy, also requests an order for the landlord to comply; a monetary claim for compensation; an order for repairs and a rent reduction for repairs, services or facilities agreed upon but not provided. The tenant stated that she seeks repairs to a fence, gate, bathroom fan, windows and compensation and a rent reduction for these requests. The tenant confirmed that these requests were unrelated to the request to cancel the notice to end tenancy. On this basis, pursuant to Residential Tenancy Branch Rules of Procedure 2.3, these requests are dismissed with leave to reapply as unrelated issues. Leave to reapply is not an extension of any applicable limitation period.

### Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 month notice?

Is the tenant entitled to recovery of the filing fee?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on November 1, 2011 on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated October 18, 2011. The monthly rent was \$925.00 and a security deposit of \$462.50 was paid.

Both parties confirmed that on August 20, 2020, the landlord served the tenant with the 1 Month Notice dated August 20, 2020 in person. The 1 Month Notice sets out an effective end of tenancy date of September 30, 2020 and that it was being given as:

- the tenant or person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord;
  - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- the tenant has engaged in illegal activity that has, or is likely to:
  - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.
  - Jeopardize a lawful right or interest of another occupant or the landlord.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The details of cause states:

*Tenant has an unauthorized occupant living in unit 65. On June 18<sup>th</sup>, 2020, a neighboring tenant's child was shot with a BB gun while playing near unit 65. The police were called and the unauthorized occupant in unit 65 was removed from the complex and taken to jail. MVHC requested the tenant to have the unauthorized adult removed from the unit as per lettered dated June 23, 2020. The tenant has not responded to MVHC regarding the letter sent on June 23<sup>rd</sup>, and the unauthorized occupant is still reported to be seen in the unit and around the complex.*

[reproduced as written]

The tenant provided written details which states,

*The person they think is living in my unit is not and what they say he did at the property he did not do nor was proven he did do it. They also say I did not respond to a letter dated Jun 23, 2020. No where does it say I had to respond.*

[reproduced as written]

The landlord claims that the tenant has an unauthorized individual living in the rental unit with the tenant. The landlord has submitted copies of an incident reports dated March 10, 2012 signed by the tenant, in which the tenant and her boyfriend were woken in the middle of the night; an incident report dated May 23, 2015 in which a neighbor, D.H. noted that "Stone" living with the tenant since she moved in; an email from an neighbor dated July 2, 2019 regarding an incident of violence involving Mr. A.; a letter dated September 18, 2019 in which the tenant's rent subsidy was withdrawn putting the tenant's rental to market rent; a notation by the landlord on September 20, 2019 that the tenant called regarding the removal of her subsidy requesting proof that Mr. A. was living elsewhere. The landlord noted, "she stated it was too time consuming and it was easier to pay market."; a copy of tenant's Certification Report dated September 18, 2019, sole source of income is BC Benefits totalling \$1,099.00 and the market rent for the rental was \$1,111.00.

The landlord also claims that the same individual was arrested by police shooting a BB gun at children in the housing property. The landlord also referenced a signed statement by another tenant dated September 27, 2020. The landlord states that in that statement the neighboring tenant had observed the tenant on 47 occasions coming and going from the rental property between June 18, 2020 and September 27, 2020. The

landlord argues that based upon this statement regarding the tenant's unauthorized occupant appears to be living at the property.

The landlord claims that the tenant has breached a material term of the tenancy agreement by allowing an unauthorized occupant in the rental contrary to the signed tenancy agreement. The landlord has referenced section 11 of the signed tenancy agreement, Use of Rental Unit which states in part,

*The Tenant agrees:*

*That the rental unit is to be used only for residential purposes and the Tenant will allow only the following occupants to reside in the Rental Unit:*

*T.B. Resident*

*M.B. Other*

*J.B. Other*

*To apply for and obtain written approval from the landlord for any additional occupants*

The landlord stated that on June 23, 2020 the tenant was advised in a letter that she must remove her unauthorised occupant from the rental unit or that her tenancy could be lost. Both parties confirmed that the tenant did not respond to this letter.

The landlord further argues that the tenant was served with a second notification on August 19, 2020 in which the tenant was advised to have the unauthorised person removed from the unit or risk losing your tenancy. The tenant argued that she did not think after reading the letter that a response was required.

The tenant disputes these claims by the landlord arguing that the other tenant's statement dated March 10, 2012 was for a different boyfriend who she no longer sees. The tenant argues that the other tenant's statement dated May 23, 2015 is fraudulent as she has had a falling out with that tenant. The tenant also argues that the tenant statement dated September 27, 2020 is also fraudulent as she has been having issues with that other tenant. The tenant stated that her friend was not charged by police for anything.

### Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

In this case, both parties have confirmed that the landlord served the tenant with the notice to end tenancy as confirmed by the tenant on August 20, 2020 in person. Both parties have confirmed that the reason of cause is related to the tenant having an unauthorized occupant living in the rental unit who has caused a Breach of a Material Term of the Tenancy Agreement.

I find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenant. Despite the tenant's claims that the neighboring tenants had provided fraudulent reports to the landlord, the tenant failed to provide sufficient evidence in support to these claims. The landlord provided signed statements as well as documentary activity reports of the tenant's unauthorised occupants actions dating back to 2015. I also note the submitted activity report by one of the other tenants which document 47 instances of the unauthorised occupant at the rental property between June 18, 2020 to September 27, 2020. On this basis, I find that the landlord has provided sufficient evidence to satisfy me that the tenant does have an unauthorised occupant living in the unit and that no written permission was given by the landlord to add or amend the list of occupants. The tenant's application to cancel the 1 month notice is dismissed.

Pursuant Section 55 of the Act, the landlord is granted an order of possession to be effective 2 days after it is served upon the tenant as the effective end of tenancy date has now passed.

### Conclusion

The landlord is granted an order of possession.

This order must be served upon the tenant. Should the tenant fail to comply with this order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

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: October 23, 2020

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Residential Tenancy Branch