



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, FF

### 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; and
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties (and the co-tenant) attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The other tenant who lives in the basement of this two-unit rental property called in to the conference hearing to act as a potential witness for the landlord. She did not participate in this hearing, although she remained available had a settlement agreement not been reached between the parties.

The tenant confirmed that the landlord handed her the 1 Month Notice on October 5, 2012, seeking an end to this tenancy by November 30, 2012. The tenant also confirmed that the landlord handed her a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on November 10, 2012. Neither party entered into written evidence a copy of either of these notices. The landlord confirmed that he received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on October 22, 2012. I am satisfied that the parties served the above documents to one another in accordance with the *Act*.

The tenant confirmed that she had received the landlord's written evidence. The landlord testified that he had not received the tenant's written evidence. The tenant testified that she sent her written evidence by mail on November 14, 2012. In accordance with section 90 of the *Act*, the tenant's written evidence is deemed served on November 19, 2012, five days after its mailing. However, the late service of the tenant's evidence was not done in accordance with the Rules of Procedure of the Residential Tenancy Branch (RTB). In addition, I noted that the photographic evidence forwarded to the RTB was blurry and very difficult to view. Given the late service of the tenant's evidence and the landlord's stated interest in dealing with the tenant's

application at this hearing, I advised the parties that I would only be considering sworn testimony from the tenant and her co-tenant, which could include their description of the written and photographic evidence of the tenant.

During the hearing, the tenant referred to a second application for dispute resolution. She said that she applied to cancel the landlord's 10 Day Notice on November 14, 2012. Although she had received a Notice of Hearing for her second application, she testified that she had not yet served the landlord with a copy of that application. Given that no service of the tenant's application to cancel the landlord's 10 Day Notice has occurred, I could not agree to the tenant's request at the hearing to join her application to cancel the 10 Day Notice with my consideration of her application to cancel the 1 Month Notice. I proceeded to hear only that application from the tenant properly before me at this hearing.

The landlord asked for an end to this tenancy and an Order of Possession if the tenant's application to cancel the 1 Month Notice were dismissed.

#### Issues(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Is the tenant entitled to recover the filing fee for this application from the landlord?

#### Background and Evidence

This one-year fixed term tenancy commenced by way of a Residential Tenancy Agreement signed by both parties on August 2, 2012, which took effect on September 1, 2012. Monthly rent according to that Agreement was set at \$1,100.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$500.00 security deposit paid on September 1, 2012.

The landlord gave undisputed sworn testimony that the reason identified in his 1 Month Notice was as follows:

*Tenant or a person permitted on the property by the tenant has:*

- *significantly interfered with or unreasonably disturbed another occupant or the landlord.*

The landlord testified that the tenant and her co-tenant had significantly interfered with or unreasonably disturbed the basement tenant in this rental property. His 1 Month Notice identified November 30, 2012, as the effective date to end this tenancy.

Although the tenant did not enter it into written evidence for this hearing, the tenant and her co-tenant referred to a second Residential Tenancy Agreement for a reduced monthly rental of \$1,000.00. They maintained that the landlord agreed to enter into this second Agreement as a result of a dispute that had arisen with the basement tenant who asserted her right to sole use of the parking space in the carport. The tenant and co-tenant testified that they had entered a copy of this second signed Agreement into written evidence for consideration of the tenant's second application to cancel the landlord's 10 Day Notice. They alleged that this second Agreement reduced the monthly rent for this rental unit to \$1,000.00 as of October 1, 2012 for an 8-month period ending on May 31, 2013, in exchange for the exclusion of the carport in the second Agreement. The landlord testified that he had no knowledge of a second signed Agreement, although he did confirm that one had been drafted for this reduced monthly rent. He said that he did not proceed with this second Agreement after consulting with the basement tenant in this rental property.

The presence or absence of a second Agreement appeared to be a material fact in this dispute. For that reason, I retrieved a copy of the tenant's second application and obtained a copy of the written evidence during the course of this hearing. A copy of this second Agreement had not yet been forwarded to the landlord by the tenants as part of their dispute resolution hearing package for the tenant's second application. This second Agreement was signed by both the landlord and the two tenants on September 22, 2012. The landlord questioned the authenticity of the signature on this second Agreement attributed to him by the tenants.

### Analysis

Pursuant to section 63 of the *Act*, the arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing, the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties (including the co-tenant) agreed to settle all issues currently in dispute under the following terms:

1. Both parties agreed that this tenancy will end by December 31, 2012, by which time the tenant and anyone on the premises will have vacated the rental unit.
2. The landlord agreed to withdraw the 10 Day and 1 Month Notices.
3. The tenant agreed to withdraw her application to cancel the 10 Day Notice issued by the landlord on November 10, 2012.
4. The landlord agreed that the monthly rent for November 2012 will be set at \$1,000.00.

5. The landlord agreed that he will allow the tenant to reduce the next scheduled rent payment for December 2012 by \$50.00 to \$950.00, to enable the tenant to recover her filing fee for this application.
6. The tenant and her co-tenant agreed to keep their vehicle at least 20 feet behind the rear bumper of the other tenant's vehicle in the driveway of this rental property.
7. Both parties agreed that this settlement agreement constituted a final and binding resolution of all issues in dispute at this time arising out of this tenancy and that neither party will initiate a new application for dispute resolution arising out of issues currently under dispute.

### Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue the attached Order of Possession to be used by the landlord if the tenant does not vacate the rental premises in accordance with their agreement by December 31, 2012. Should the tenant(s) fail to comply with this Order, this Order may be filed 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: November 21, 2012

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Residential Tenancy Branch

