



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, OPT

### 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;
- an order of possession of the rental unit pursuant to section 54.

Both parties attended the hearing via conference call and provided affirmed testimony. The tenant stated that the landlord was served with the notice of hearing package via courier, but was unable to provide a date. The landlord confirmed that the notice of hearing package was received via courier on August 9, 2016. The tenant did not submit any documentary evidence, save a copy of the 1 Month Notice. The landlord submitted a late 13 page documentary evidence package on August 12, 2016 in person to the tenant. The tenant confirmed receipt of the landlord's documentary evidence. It was also noted during the hearing that the landlord failed to provide the last 3 pages (complaints filed by other tenants) to the tenant fearing a reprisal from the tenant.

I accept the undisputed affirmed evidence of both parties and find that both parties have been properly served with the tenant's notice of hearing package as per sections 88 and 89 of the Act. No evidence, save a copy of the 1 Month Notice was submitted by the tenant. I accept the first 9 pages of the landlord's late documentary evidence as per sections 88 and 89 of the Act as the only evidence before me that the landlord received the notice of hearing package on August 9, 2016 and responded within 3 days with their documentary evidence on August 12, 2016. I also note that the tenant did not raise any issue with the landlord's late evidence submission. However, the landlord's last 3 pages which were excluded from the tenant's copy of the landlord's evidence are excluded and shall not be considered for this hearing.

### Preliminary Issue

The tenant also applied for an order of possession and clarified that this was made in error as the tenant still occupies the rental unit. As such, no further action is required for this portion of the claim.

### Issue(s) to be Decided

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

### 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.

Neither party submitted a copy of the signed tenancy agreement, but confirmed that assigned tenancy agreement was made between the two parties.

On June 28, 2016, the landlord served the tenant with the 1 Month Notice. The 1 Month Notice sets out an effective end of tenancy date of July 31, 2016 and that it was being given as:

- the tenant or person permitted on the property by the tenant has:
  - put the landlord's property at significant risk; or
- 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 provided affirmed testimony that the tenant has put the property at risk as a result of breaking the same window twice in the rental unit, repeatedly damaging the corridor walls with his wheelchair, selling or allowing the sale of drugs from the rental unit and disturbing the quiet enjoyment of the other occupants with excessive noise. The tenant has disputed all of the landlord's claims.

### Analysis and Conclusion

Section 63 of the Residential Tenancy Act provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion between the two parties during the hearing led to a resolution. Specifically, it was agreed as follows:

The tenant agrees to withdraw his application to dispute the 1 Month Notice dated June 28, 2016.

The landlord agrees to cancel the 1 Month Notice dated June 28, 2016.

Both parties agreed to mutually end the tenancy on January 31, 2017, by which time the tenants will have vacated the rental unit.

Both parties agreed that the above noted particulars comprised a full and final settlement of all aspects of the dispute arising from their applications for dispute resolution.

In order to implement the above settlement reached between the parties, I issue an Order of Possession to be used by the landlord if the tenant fails to vacate the rental premises in accordance with their agreement by 1:00 pm on January 31, 2017. The landlord is provided with this order in the above terms and the tenant(s) must be served with this Order in the event that the tenant does not vacate the premises by the time and date set out in their agreement. Should the tenant fail to comply with this Order, the 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: August 19, 2016

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Residential Tenancy Branch