



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 353178 BC LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC, FFL  
MT, CNC, ERP, MNDCT, OLC, FFT

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”). The matter was set for a conference call.

The Landlord’s Application for Dispute Resolution was made on September 19, 2018. The Landlord applied to enforce a One-Month Notice to End Tenancy dated August 7, 2018, and to recover their filing fee. The Tenant’s Application for Dispute Resolution was made on September 27, 2018. The Tenant applied to cancel a One-Month Notice to End Tenancy for Cause (the Notice) dated August 7, 2018, for more time to apply to cancel the Notice, for an order for emergency repairs, to request a monetary order for damages or compensation under the Act, to request an order for the Landlord to comply with the Act, and to recover the filing fee paid for this application.

The Landlord and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

## Preliminary Matters

I have reviewed the applications before me in these proceedings, and I note that the Tenant has applied to cancel a Notice to end tenancy as well as for several other issues. I find that some of the Tenant's other issues are not related to the Tenant's request to cancel the Notice. As these matters do not relate directly to a possible end of the tenancy, I apply section 2.3 of the Residential Tenancy Branches Rules of Procedure, which states:

### **2.3 Related issues**

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I explained to the parties, at the outset of the hearing, that I am dismissing with leave to reapply, the Tenant's claims for an order for emergency repairs, for a monetary order for damages or compensation under the Act, and for an order for the Landlord to comply with the *Act*.

I will proceed with this hearing on the Tenant's claim to cancel the Notice dated August 7, 2018, for more time to cancel the Notice and to recover the filing fee paid for this application, and the Landlord's application.

## Issues to be Decided

- Should the Notice dated August 7, 2018, be cancelled?
- Is the Tenant entitled to additional time to file to dispute the Notice to End Tenancy?
- Is the Landlord entitled to an order of possession?
- Is the Tenant entitled to the return of their filing fee?
- Is the Landlord entitled to the return of their filing fee?

## Background and Evidence

The tenancy began on April 15, 2015, as a month to month tenancy. Rent in the amount of \$800.00 is to be paid by the first day of each month. The Tenant paid the Landlord a \$400.00 security deposit. The Landlord provided a copy of the tenancy agreement into documentary evidence.

The Landlord testified that the Notice was served to the Tenant on August 7, 2018, by leaving it in the Tenant's mailbox. The Notice has an effective date of September 7, 2018. The reasons checked off by the Landlord within the One Month Notice are 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 Notice informed the Tenant of the right to dispute the Notice within 10 days after receiving it. The Notice also informed the Tenant that if an application to dispute the Notice is not filed within 10 days, the Tenant is presumed to have accepted the Notice and must move out of the rental unit on the date set out on page one of the Notice. The Landlord submitted a copy of the Notice, a copy of the proof of service document with a witness's signature and two pictures of the service of the Notice into documentary evidence.

The Landlord is requesting an order of possession dated November 30, 2018.

The Tenant testified that he had not received the Notice until September 21, 2018, when he received the Notice of Hearing Documents from the Landlord. The Tenant testified that the Landlord had normally served him with all the paperwork regarding his tenancy by sliding them under his door and that he believes that Landlord should have served him with the Notice the same way. The Tenant testified that he had been out of town a lot in July, August and September 2018 and that he rarely checked his mailbox. The Tenant is requesting more time to dispute the notice.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 47 of the *Act* requires that upon receipt of a Notice to End Tenancy for Cause a tenant must, within ten days, dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do this, the tenant is conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice under section 47(5).

**Landlord's notice: cause**

**47** (5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit by that date.

Accordingly, I find that the Tenant had until August 20, 2018, to file to dispute the Notice. I have reviewed the Tenant's application for dispute resolution, and I find that the Tenant filed to dispute the Notice on September 27, 2018, which is outside the statutory time limit.

The Tenant has request additional time to file to dispute the Notice, pursuant to section 66 of the *Act*. Section 66 of the *Act* states that an extension of time may only be granted if the party requesting the extension has proven that an exceptional circumstance has occurred that prohibited them from filing their application within the statutory time limit.

**Director's orders: changing time limits**

**66** (1) The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59 (3) [*starting proceedings*] or 81 (4) [*decision on application for review*].

In this case, the Tenant testified that he did not dispute the Notice within the legislated timeline as he had not received the notice until September 21, 2018, and that he filed to dispute the Notice as soon as he received the Notice.

Based on the Tenant's claim, that he did not receive the Notice, I must confirm that the Landlord served the Notice in accordance with the *Act*. Section 88 of the *Act* speaks to how documents must be served.

**How to give or serve documents generally**

**88** All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (j) by any other means of service prescribed in the regulations.

I have reviewed the documentary evidence submitted by the Landlord, and I find that the Landlord has submitted sufficient documentary evidence to prove to me that the Notice to End Tenancy had been served by leaving it in the Tenant's mailbox, which is an approved method of service pursuant to section 88(f) of the *Act*. Therefore, I find that the Landlord did serve the Notice in an approved method.

Although, I accept the verbal testimony of the Tenant that he rarely picked up his mail from his mailbox, I find that neglecting to pick up your mail does not constitute an exceptional circumstance under section 66 of the *Act*. Therefore, I find that the Tenant has failed to prove exceptional circumstance sufficient to be awarded additional time to file to dispute the Notice. Consequently, I dismiss the Tenant's request for more time to dispute the Notice, pursuant to section 66 of the *Act*.

As the Tenant failed in his application for more time to dispute the Notice, and the Tenant failed to dispute the Notice within the statutory time limit. I find that the Tenant is conclusively presumed to have excepted the Notice and that his tenancy would end in accordance with that Notice. Therefore, I dismiss the Tenant's application, and I find the Notice dated August 7, 2018, is valid and enforceable.

Section 55 of the *Act* states that a landlord may request an order of possession if a notice to end the tenancy has been given by the landlord and the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

#### **Order of possession for the landlord**

**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.

In issuing an Order of Possession pursuant to section 55(2), I must first be satisfied that the Notice to end tenancy complies with section 52 of the *Act*. I have carefully reviewed all the documentary evidence and oral testimony and in accordance with section 88 and 89 of the *Act*, and I find that the Tenant was deemed served with the Notice on August 10, 2018, three days after the day the notice was put in the Tenant's mailbox. I find the effective date recorded on this Notice did not allow sufficient time for this method of service.

However, the *Act* does provide for incorrect effective dates to be automatically changed under Section 53 of the *Act*.

#### **Incorrect effective dates automatically changed**

**53** (1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.

(2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

Therefore, I find that the earliest date that this Notice may take effect, in order to comply with the *Act*, is September 30, 2018.

Therefore, I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord, not later than 1:00 p.m. on November 30, 2018. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that the costs of such enforcement are recoverable from the Tenant.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in his application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for his application. The Landlord is awarded permission to retained \$100.00 from the security deposit being held for this tenancy, in full satisfaction of this award.

### Conclusion

I grant an **Order of Possession** to the Landlord, not later than 1:00 p.m. on **November 30, 2018**. The Tenant must be served with this Order. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 72 of the *Act*, I order that the Landlord may retain \$100.00 from the security deposit they hold.

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 5, 2018

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Residential Tenancy Branch