



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding IMH POOL XIILP  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, MT, OLC, RP

### Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “*Act*”) to cancel a One Month Notice to End Tenancy for Unpaid Rent (the “One Month Notice”), for more time in which to dispute the One Month Notice, for an Order for the Landlord to comply with the *Act*, *Residential Tenancy Regulation* (the “*Regulation*”), and for an Order for regular repairs to be completed.

The Tenant and two agents for the Landlord (the “Landlord”) were present for the duration of the teleconference hearing. The parties confirmed that the Notice of Dispute Resolution Proceeding package and copies of each party’s evidence was exchanged as required.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

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

The name of the Landlord was clarified during the hearing and amended on the Application for Dispute Resolution to the correct company name as stated by the agents for the Landlord. This amendment was made pursuant to Section 64(3)(c) of the *Act*.

As stated in Rule 2.3 of the *Residential Tenancy Branch Rules of Procedures*, unrelated claims may be dismissed. Due to the urgent matter of dispute over a notice to end tenancy, and the limited time provided for a hearing, the Tenant's application for an Order for the Landlord to comply, as well as the Tenant's application for regular repairs are dismissed, with leave to reapply.

During the hearing, the parties confirmed that some of the repair issues had been resolved outside of the Dispute Resolution process. The parties were notified that should there be any issues remaining, both parties are at liberty file a new Application for Dispute Resolution.

Therefore, this decision will deal with the Tenant's application to cancel the One Month Notice, as well as his request for more time in which to dispute the notice.

#### Issues to be Decided

Should the Tenant be granted more time to dispute the One Month Notice to End Tenancy for Cause?

If the Tenant is granted more time, should the One Month Notice to End Tenancy for Cause be cancelled?

If the One Month Notice to End Tenancy for Cause is upheld, is the Landlord entitled to an Order of Possession?

#### Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy began on October 1, 2016. Monthly rent is currently \$1,460.00 per month, due on the first day of each month. A security deposit of \$647.50 was paid at the outset of the tenancy. The tenancy agreement was submitted into evidence and confirms the details as stated by the parties.

On August 30, 2018, the Landlord served the Tenant with a One Month Notice by posting the notice on his door. The Tenant confirmed receipt of the One Month Notice on August 30, 2018.

The One Month Notice was submitted into evidence and states the following as the reasons for ending the tenancy:

- Tenant or a 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
  - Put the landlord's property at significant risk
- 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

The effective end of tenancy date was stated as October 2, 2018.

The Tenant filed an Application for Dispute Resolution on September 21, 2018. He provided testimony that after receiving the One Month Notice on August 30, 2018, he spoke to management on August 31, 2018. He stated that the manager he spoke to said she would speak with the other manager when back from vacation. The Tenant testified as to his understanding that the One Month Notice may be cancelled by the Landlord.

The Tenant confirmed that he received both pages of the One Month Notice on August 30, 2018. He stated that he called the Residential Tenancy Branch on September 1, 2018 to inquire about how to file an Application for Dispute Resolution.

When the Tenant did not hear back from the Landlord, he went to speak to them on September 11, 2018 and he was told that the One Month Notice would not be cancelled. He stated that it took him some time to compile the information for his Application, which is why he applied late, as well as due to the time in which he was waiting to hear back from the Landlord.

The Landlord stated that they were clear with the Tenant that the One Month Notice remained in effect and that the notice would not be cancelled, and that the tenancy would not be re-instated. They testified that they are willing to provide the Tenant until the end of November 2018 to vacate the rental unit, instead of the effective end of tenancy date stated on the One Month Notice.

### Analysis

I refer to Section 47(4) of the *Act* which states that a tenant has 10 days in which to dispute a One Month Notice. Section 66 of the *Act* states that a time limit may be extended only in *exceptional circumstances*.

As the Tenant received the One Month Notice on August 30, 2018, I find that he had 10 days from then in which to dispute the notice. Although the Tenant stated that he applied late as he was waiting for information from the Landlord, I find that an Application for Dispute Resolution could have been made during the time he was waiting to hear from the Landlord. I do not find sufficient evidence before me of any exceptional circumstances that prevented the Tenant from applying within the 10 days allowable under the *Act*.

The second page of the One Month Notice contains information for the tenant regarding the timeline in which a dispute may be filed, and the Tenant confirmed receipt of both pages of the notice. The Tenant also provided testimony that he called the Residential Tenancy Branch on September 1, 2018 to inquire about the Dispute Resolution Process.

I find no evidence before me to prove that there were exceptional circumstances that prevented the Tenant from applying to dispute the One Month Notice within the 10 days allowable. Therefore, I dismiss the Tenant's request for more time to dispute the One Month Notice.

Instead, as the Tenant applied for Dispute Resolution on September 21, 2018, I find that Section 47(5) of the *Act* applies, and the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice. The Tenant's application to cancel the One Month Notice is dismissed.

Pursuant to Section 55 of the *Act*, when a tenant's application to cancel a notice to end tenancy is dismissed, the landlord must be granted an Order of Possession, if the notice is in compliance with Section 52 of the *Act*. Upon review of the One Month Notice, dated August 30, 2018, I determine that it meets the requirements outlined in Section 52 of the *Act*.

Therefore, I grant the Landlord an Order of Possession. I accept the Landlord's testimony that they are willing to provide the Tenant additional time to move, and grant the Landlord an Order of Possession for November 30, 2018 at 1:00 pm.

### Conclusion

I grant an Order of Possession to the Landlord effective **on November 30, 2018 at 1:00 pm**. This Order must be served on the Tenant. 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.

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 02, 2018

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Residential Tenancy Branch