



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding WIDSTEN PROPERTY MANAGEMENT INC.  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      CNC

### Introduction

This decision is in respect of the tenant's application for dispute resolution under the *Residential Tenancy Act* (the "Act"). The tenant sought an order canceling a One Month Notice to End Tenancy for Cause (the "Notice"), pursuant to section 47(4) of the Act.

A dispute resolution hearing was convened on December 21, 2018 and the tenant and the landlord attended, were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. No issues of service were raised.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure* and to which I was referred, only evidence relevant to the issues of this application are considered in my decision.

I note that section 55 of the Act requires that when a tenant applies for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the application is dismissed and the landlord's notice to end tenancy complies with the Act.

### Issues

1. Is the tenant entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession of the rental unit?

### Background and Evidence

The landlord's agent (hereafter the "landlord") testified that the tenancy commenced on December 1, 2014. The monthly rent, due on the first of the month, was initially \$1,025.00, later increased to \$1,080.00. The tenant paid a security deposit of \$525.00.

A copy of the written tenancy agreement was submitted into evidence, and I noticed a couple of discrepancies. First, the agreement listed two tenants; the tenant explained that the other tenant is now gone. Second, the agreement listed the name of a different landlord; the landlord explained that he took over property management from the previous landlords on June 1, 2018.

The landlord testified that the tenant was repeatedly late paying rent throughout the year. To wit, the tenant paid rent on June 14, July 11, August 13, September 4, and October 9, 2018. Further, the landlord testified that the tenant has not paid any rent for November and December 2018. In support of his application the landlord submitted into evidence a copy of the ledger pertaining to the rent payments by the tenant; the ledger reflected the late payments as described by the landlord.

On October 12, 2018 at 9:49 PM, the landlord served the Notice on the tenant's door. Service was witnessed by a third party ("R.A."). The Notice indicated that the ground on which the Notice was being issued was that the tenant is repeatedly late paying rent. The effective end of tenancy was dated November 30, 2018. The landlord submitted a copy of the Notice into evidence.

The tenant testified that the landlord's testimony is "all pretty straightforward" and that he has been late paying rent, but not necessarily for the entire amount of the rent. He explained that he had an agreement with one of the previous landlords (now deceased) by which he could pay most of the rent at the end of the month and then the remainder some days later.

The tenant concluded his testimony and submissions by reiterating that he thought he had an agreement by which rent could be paid late. Notwithstanding, the tenant explained that he is looking for a new place to live, and that the thirty days provided for in the Notice is simply not enough time given the very tight housing market in the city.

The landlord in his rebuttal stated that he is, and was, not aware of any prior agreement by which rent could be paid late.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Where a tenant applies to dispute a One Month Notice to End Tenancy for Cause, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice is based.

In this case, however, I note that the Notice was served on the tenant's door on October 12, 2018 at 9:49 PM. The deeming provisions of section 90(c) of the Act state that, in the absence of evidence to the contrary, where a document is served by being attached to a door, that document is deemed to have been received on the third day after it is attached. Therefore, the Notice would be deemed to have been received on October 15, 2018.

As the Notice explains on page 2, the tenant had the right to dispute the Notice within 10 days after he received it by filing an application for dispute resolution. Most importantly it also states that "If you do not file an Application within 10 days, you are presumed to accept this Notice and must move out of the rental unit or vacate the site by the date set out on page one of this Notice."

Section 47(5) of the Act, on which the Notice's language is based, reads as follows:

(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.

In this case, the tenant had until October 25, 2018 to file for dispute resolution, but did not apply until November 14, 2018, after the deadline passed. As such, the tenant was conclusively presumed to have accepted that the tenancy ended November 30, 2018.

As the tenant has presumed to accept the Notice, I need not consider the grounds on which the Notice was issued.

Given the above, I dismiss the tenant's application without leave to reapply and accordingly issue the landlord an order of possession of the rental unit.

Conclusion

I dismiss the tenant's application without leave to reapply.

I grant the landlord an order of possession, which must be served on the tenant and is effective two days from the date of service. This order may be filed in, 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 Act.

Dated: December 21, 2018

---

Residential Tenancy Branch