



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## Decision

### Dispute Codes:

**MT, CNC, FF**

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to allow more time to make an application to cancel a Notice to End Tenancy, to cancel a Notice to End Tenancy for Cause, and to recover the filing fee from the landlord for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, sent via registered mail on March 13, 2009. The landlord was deemed to be served the hearing documents on March 18, 2009, the fifth day after they were mailed.

The tenant, landlord and building care taker appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Two witnesses were called to the hearing for the tenant and gave affirmed testimony.

Both the applicant and the respondent acknowledged receipt of the evidence submitted by the other for this hearing.

### Issue(s) to be Decided

The issues to be decided based on the testimony and the evidence are:

- Whether the tenant is granted an extension to make an application to cancel a Notice to End Tenancy

- To cancel the Notice to End Tenancy for Cause
- Whether the tenant is entitled to recover the filing fee from the landlord for the cost of this application.

### Background and Evidence

The month to month tenancy began on January 1, 2009, with rent of \$995.00 per month, payable on the first of each month. A \$500.00 deductible was paid by the tenant on December 21, 2008.

The landlord issued a 1 Month Notice to End Tenancy on February 23, 2009 which was first served via registered mail on February 23, 2009. The landlord provided Canada Post receipt numbers which confirmed that the registered mail was not picked up by the tenant and subsequently returned to the landlord on March 20, 2009.

The Caretaker testified that he placed a second copy of the 1 Month Notice to End Tenancy along with a letter dated February 23, 2009 in the rental unit door jam on Friday February 27, 2009 at approximately 1:00 p.m.

The landlord stated that he was not previously aware that the care taker put a copy of the notice and letter in the tenant's door jam.

The tenant testified that he found the 1 Month Notice to End Tenancy and the letter dated February 23, 2009, in his door jam, on March 1, 2009, when he returned after being away for the weekend.

The landlord testified that they have received complaints of noise, music, allegations of illegal activities involving smoking drugs, problems with the tenant's friends, and complaints about a woman whom the tenant refers to as his housekeeper.

The landlord stated that other tenants in the building have complained that the tenant's housekeeper has access to the apartment building, that she brings her dog with her when she is in the building, that she has left the front door to the apartment building propped open, she brings in guests to the apartment, she has been seen wandering around the building, wandering in the parking lot, and found to be loitering in the laundry room.

Both the landlord and tenant confirmed that the tenancy agreement entered into evidence, was a copy of the tenancy agreement that had been entered into by the tenant, and confirmed that item 18 of the tenancy agreement which states that pets are not allowed in the building unless specifically permitted in writing, that the tenant must not keep or allow a pet in the building.

Copies of letters issued from the landlord to the tenant, dated January 29, 2009, February 4, 2009 and February 23, 2009 were entered into evidence by both the landlord and the tenant.

The tenant is requesting an extension to the time limit required to apply for Dispute Resolution to cancel the Notice to End Tenancy. The tenant testified that he was not able to submit his application earlier as he was busy at work, could not take time away from work, and did not have any money to file the application prior to March 12, 2009.

The tenant testified that between January 4 and January 10, 2009 he received a call from the Caretaker, who advised that he had received a complaint about his loud music.

The tenant stated that the Caretaker called him again between January 8 and January 24, 2009 stating that the same person had complained again. The tenant stated that it was always the same tenant complaining, so the tenant made a verbal agreement with the Caretaker that if a different tenant complained then they would consider making changes.

The landlord stated that they have received complaints from more than just the one tenant.

The tenant advised that he received a telephone call from the Caretaker, on January 28, 2009 while he was at work, stating that the Caretaker went into his apartment to see if everything was okay and asked the tenant if that was okay.

The Caretaker denied going into the apartment and stated that he was at the door of the tenant's apartment; that he had knocked on the door, that the housekeeper had opened the door, and the Caretaker was calling the tenant to get his permission to enter the rental unit.

The tenant stated that he had also requested use of a parking stall, but that he never received written permission to have a parking stall.

The tenant testified that he works long hours in construction and that his housekeeper has keys to his apartment, which he pays her \$20.00 per hour to clean his apartment, cook his meals, do his laundry, takes care of his business such as mailing letters, and in fact she filed the application for Dispute Resolution for this hearing, on his behalf. The tenant stated that his housekeeper is a necessity in his life, that her dog is a small breed that does not shed, and the dog is very old and ill. The tenant advised that he has known his housekeeper for about 8 months.

The tenant testified that his housekeeper stopped bringing her dog to the apartment during the week of February 8 – 14, 2009.

Witness (1) was called into the hearing and testified that he is a tenant in the same apartment building as the tenant. Witness (1) testified that the tenant assisted him in writing the letter which was entered into evidence, that he did not know the tenant prior

to the tenant moving into the apartment building, and that he has personally complained to the Caretaker about other dogs in the building.

The Caretaker testified that he was aware of one other tenant who had a dog in the building that a visitor had brought in. The Caretaker stated that he spoke to that tenant about the complaint and that he was not aware of any other dogs in the building.

Witness (2) was called to testify at the hearing. She confirmed that she works as a housekeeper for the tenant, earns \$15.00 to \$20.00 per hour to clean, cook, and work for the tenant when required. Witness (2) testified that she has known the tenant for approximately four or five months.

The tenant testified that he was concerned that the Caretaker was allowed to attend this hearing with the landlord, as he felt the landlord was coaching the Caretaker on what to say.

The landlord testified that he is requesting an Order of Possession in relation to the 1 Month Notice to End Tenancy for cause.

### Analysis

**Request for extension to submit application** – The tenant has requested that his application to dispute a 1 Month Notice to End Tenancy be allowed late, requesting an extension to the 10 day time limit to apply to dispute a Notice to End Tenancy.

Based on verbal testimony and documentary evidence, I find that the 1 Month Notice to End Tenancy was served via registered mail on February 23, 2009 and deemed to have been received by the tenant on February 28, 2009 (five days after it was mailed) pursuant to Section 89 of the *Residential Tenancy Act*.

Based on the above, the tenant's application to dispute the 1 Month Notice to End Tenancy was required to be filed on or before March 10, 2009.

The tenant provided contradictory testimony related to the filing of his application. When speaking to his request for an extension, the tenant testified that he could not file his application sooner as he had to work, could not take time off of work, and that he had no money to file that application. The tenant later testified that the application to dispute the 1 Month Notice to End Tenancy was filed on his behalf by his housekeeper, that she assisted him in completing the application and that she was the one who took his identification and money down to the Residential Tenancy Branch to file the application.

Section 66(1) of the *Residential Tenancy Act (Act)* stipulates that time limits established by the *Act* **may only be extended in exceptional circumstances**. I find that the reasons provided by the tenant do not meet the criteria of "exceptional circumstances, and in the presence of the tenant's contradictory testimony on who actually filed the application, himself or his housekeeper, I cannot allow a late application to dispute the landlord's 1 Month Notice to End Tenancy.

**Landlord's request for an Order of Possession** – The documentary evidence supports the landlord's request to end the tenancy for cause pursuant to section 47 (1) (d) and 47 (1) (h) (ii) whereby the tenant was informed, in writing, on two occasions of breaching the tenancy agreement.

The first, which based on the tenant's testimony, has since been corrected whereby the housekeeper is no longer bringing her dog to the rental unit.

The second is one whereby the tenant and a person permitted on the residential property, the housekeeper, have both significantly interfered with or unreasonably disturbed another occupant and seriously jeopardized the safety of the other occupants.

I find that based on the tenant's testimony, he will continue to allow the housekeeper to access to the rental unit.

The tenant was served the 1 Month Notice to End Tenancy via registered mail and by receiving the notice which was in is rental unit door jam, pursuant to Section 89 of the *Residential Tenancy Act*. The tenant failed to respond to dispute the notice within the regulated time frames and is presumed to accept the Notice to End Tenancy.

Based on the above, I find in favor of the Landlord's request and grant an Order of Possession.

**Request to Fax Decision** – The tenant has requested that this decision be faxed to a retail UPS store. Under the current privacy legislation, I find that I cannot fax a decision such as this, to a public retail outlet, without having prior consent of the other parties named in this decision. The decision will be mailed to both the applicant and respondent.

#### Conclusion

The landlord has been granted an Order of Possession that is effective **two days upon service**. This order must be served on the tenant, once served; this Order can be filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

The landlord's copy of this decision is accompanied by the Order of Possession which is to be served upon the tenant.

April 2, 2009  
Date of Decision

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Dispute Resolution Officer