



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a One Month Notice to End tenancy and a Monetary Order to recover the filing fee.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and were hand delivered to the landlord on April 14, 2009.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing, a decision has been reached.

### Issues(s) to be Decided

- Whether the landlord is entitled to an Order of Possession?
- Has the tenant provided sufficient evidence that the Notice to End Tenancy can be cancelled?
- Is the tenant entitled to recover the cost of the filing fee?

### Background and Evidence

This tenancy started on August 01, 2009. Rent was \$1,050.00 per month payable on the 1<sup>st</sup> of each month. The tenants paid a security deposit of \$525.00 on August 01, 2009. The landlord issued a One Month Notice to End Tenancy for Cause on April 05, 2009. The reasons the landlord gave for ending the tenancy was the tenants rental

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unit/site is part of an employment arrangement that has ended and the unit/site is needed for a new employee. The tenant disputes this notice and testifies that she was never employed by the landlord.

The landlord confirms that the tenant was not directly employed by him however the tenant rented the barn from him as a commercial venture for her equestrian business on a commercial lease and the rental unit was leased under a separate lease which is covered by the *Residential Tenancy Act*. The landlord testifies that the tenant had not carried out her duties under the commercial agreement and therefore he had no option but to terminate this agreement. The rental unit in the barn where the tenant lived although not part of the commercial lease is rented in line with the business carried out on the property and as such this unit is required for the next tenant in order for them to perform their function and duties under their commercial lease.

The tenant testifies that the allegations made by the landlord about them not carrying out their functions and duties as part of their commercial agreement are not true, However, as this is part of the commercial lease and not the Residential Tenancy Lease then these arguments do not form part of the basis of my decision. It is evident that the residential unit is rented separately to the tenants and not primarily occupied for business use. However, some functions of the business are conducted from the rental unit such as overseeing the horses and general security and management of the outside area and barn.

The landlord has agreed to extend the Notice period to allow the tenant more time to move from the property, to enable her to find alternate accommodation for her horses and wind down her business.

## Analysis



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The Residential Tenancy Act does not have jurisdiction over any commercial leasing agreements. However, as the tenant and landlord entered into the rental of the apartment in the barn as a separate agreement then this is covered under the Act. s. 4 (d).

As the landlord has entered into a new business agreement with another tenant who requires the living accommodation in the barn to carry out their functions and duties it is reasonable for the landlord to request an Order of Possession based on the fact that the commercial agreement he had with the tenant has ended. Therefore I uphold the landlords One Month Notice to End Tenancy effective on June 30, 2009. The tenants' application is dismissed without leave to reapply.

## Conclusion

Therefore, pursuant to s. 55 of the *Act*, I have issued an Order of Possession for June 30, 2009.

The landlord is given a formal Order of Possession and the tenant **must** be served with this Order as soon as possible. The Order of Possession may be enforced in 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: May 15, 2009.

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Dispute Resolution Officer