



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, MNDC, CNC, FF

### Introduction

This conference call hearing was convened in response to two applications for dispute resolution as follows:

By the landlord: as an application for an Order of Possession for Cause; for money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement; and to recover the filing fee associated with his application.

By the tenant: as an application for cancellation of the landlord's 1 Month Notice to End Tenancy; and to recover the filing fee associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to recover the filing fee?

Is the tenant entitled to cancellation of the Notice to End Tenancy?

Is the tenant entitled to recover the filing fee?

### Background and Evidence

The rental unit consists of a single detached house with eight bedrooms divided equally between two floors. The tenant occupies a lower unit where the occupants all share a common kitchen, bathroom and laundry room.

Pursuant to a written agreement, the month to month tenancy started on February 28<sup>th</sup>, 2011. The rent is \$550.00 per month and the tenant paid a security deposit of \$275.00.

Landlord H.Z. testified that the tenant disregards the sign on the outside gate, which he slams continually and disturbs the other occupants. He stated that; an issue with excrement left in the bathroom occurred once; that he has a cell phone recording of a shouting match between the landlord and another occupant on June 10<sup>th</sup>, 2011; and that the tenant left broken glass in the kitchen sink rather than disposing of it in the garbage can.

Former tenant A.A. testified that she had a conflict with the tenant during her tenancy at the house of an issue with food in the fridge; she stated that the tenant's demeanour is aggressive and intimidating, that she felt threatened, and characterized the tenant as messy and not considerate that he is sharing facilities with others.

In her documentary evidence, the landlord provided 6 photographs to support his testimony concerning the unsanitary condition of the common areas. He also provided four letters signed by the other occupants sharing that the tenant's actions have been disturbing.

D.Y. testified that she served the tenant with the 1 Month Notice to End Tenancy on June 20<sup>th</sup>, 2011. She stated that she went to the tenant's door with her mother; that the tenant refused to accept service; and that she slid the notice under the tenant's door.

The tenant called D.Y. a liar, and that her testimony concerning the service of the notice as she described never occurred. He stated that he only received the notice on July 25<sup>th</sup>, 2011. He disagreed with H.Z.'s testimony in every particular; he stated that the

shouting match never occurred; that he did break glass but that he did not want to use vacuum and because it happened at 5 AM; that the gate was a pre-existent problem; and that the issues do not warrant an eviction notice. The tenant also disagreed with the former tenant's version of events, and argues that he tries to be cognisant of living with other tenants.

### Analysis

Section 47(5) of the *Residential Tenancy Act* provides that if a tenant who has received a notice to end tenancy with cause does not make an application for dispute resolution within 10 days, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

Whether or not the landlords provided sufficient evidence to prove their case to end the tenancy, I am satisfied that they provided sufficient grounds to issue a Notice to End Tenancy on June 20<sup>th</sup>, 2011. Concerning the disputed date of service, I prefer the landlords' evidence that the notice was served on June 20<sup>th</sup>, 2011; I note that the landlords' application for dispute resolution was received at the Residential Tenancy Branch on July 19<sup>th</sup>, 2011; if they served the tenant with the notice to end tenancy on July 25<sup>th</sup>, it would mean that they filed for dispute resolution one week before the fact and I find this notion irrational. The landlord also provided Proof of Service with specific details, and that she was accompanied by her daughter. Therefore, on a balance of probabilities, I find that the landlords did attempt personal service of the notice to end tenancy on June 20<sup>th</sup>. The tenant did not file an application for dispute resolution within the statutory time frame and on that basis I must find that the tenancy ended on the date stated on the notice.

Concerning the landlord's monetary claim of \$50.00 for cleaning services, the landlord did not provide sufficient evidence to prove that this tenant was the party responsible and therefore I dismiss this portion of their claim.

Conclusion

The tenant's application is dismissed.

I grant the landlord an Order of Possession effective two days from the date the order is served upon the tenant. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Since the landlord was partially successful, I grant the landlord partial recovery of the filing fee in the amount of \$25.00, which she can deduct from the tenant's security deposit.

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: August 18, 2011.

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Residential Tenancy Branch