



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

CNC, FF

### Introduction

This hearing was held in response to the tenant's Application requesting a One Month Notice to End Tenancy for Cause be cancelled and to recover the filing fee cost.

The tenant provided affirmed testimony that he submitted his application to a Service BC office on August 10, 2011 and that on August 11, 2011, he was provided with the Notice of hearing package. On August 11, 2011, the tenant served the landlord copies of the Application for Dispute Resolution and Notice of Hearing via courier service to the landlord's service address indicated on the Notice ending tenancy issued on August 5, 2011.

The tenant's legal counsel stated that on September 12, 2011, he sent the landlord documents via facsimile, to the number provided on the Notice ending tenancy issued on August 5, 2011. The documents referenced today's hearing; the landlord did not respond or contact the tenant's legal counsel.

Upon my request, the tenant submitted a copy of the courier receipt, confirming delivery of the hearing package to the landlord's address via courier on August 11, 2011. The receipt indicated that the tenant's hearing package was "delivered to Dave – 8/15/11 – 9:42 AM." The tenant also submitted reference of service of the One Month Notice Ending Tenancy for Cause, made by the landlord to the tenant via courier service on August 8, 2011.

Section 64 of the Act provides:

**64** (1) *The director may order that a notice, order, process or other document may be served by substituted service in accordance with the order.*

(2) *In addition to the authority under subsection (1), the director may make any of the following orders:*

*(a) that a document must be served in a manner the director considers necessary, despite sections 81 [how to give or serve documents generally] and 82 [special rules for certain documents];*

***(b) that a document has been sufficiently served for the purposes of this Act on a date the director specifies;***

*(c) that a document not served in accordance with section 81 or 82 is sufficiently given or served for purposes of this Act.*

(Emphasis added)

Therefore, based on the testimony and evidence of delivery of the hearing package to the landlord via courier service on August 15, 2011, I find that the landlord as been sufficiently served with Notice of this hearing.

Further, I considered the attempt made by the tenant's legal counsel on September 12, 2011, to elicit some sort of response from the landlord and found that submission supported the tenant's testimony that he had served the landlord with Notice of the hearing; the landlord has apparently chosen not to respond.

#### Issue(s) to be Decided

The issue to be decided is whether the Notice to End Tenancy for Cause, issued on August 5, 2011, should be set aside.

#### Analysis

When a tenant applies to cancel a Notice ending tenancy, the landlord has the burden of proving the reasons upon which the Notice was issued.

As the landlord has been sufficiently served with Notice of this hearing and failed to attend, in support of the Notice ending tenancy, I find that the One Month Notice issued on August 5, 2011, ending tenancy for cause, is of no force or effect.

This tenancy will continue until it is ended as provided by the Act.

As the tenant's application has merit I find he is entitled to the \$50.00 filing fee which may be deducted from the next month's rent due.

Conclusion

As the landlord failed to attend the hearing in support of the One Month Notice to End Tenancy for Cause, dated August 5, 2011, I order that this tenancy continue until it is ended in accordance with the Act.

The tenant is entitled to the \$50.00 filing fee, which may be deducted from the next month's rent due.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Manufactured Home Park Tenancy Act*.

Dated: September 15, 2011.

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Residential Tenancy Branch