



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

Tenant's application: CNC

Landlord's application: OPC; FF

### **Introduction**

This matter was adjourned from November 18, 2011 to allow the Tenant's advocate to attend. An Interim Decision was issued on November 18, 2011.

The Tenant seeks to cancel a One Month Notice to End Tenancy for Cause.

The Landlord seeks to end the tenancy and obtain an Order of Possession; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

It was established that the Landlord received the Tenant's Notice of Hearing documents on October 28, 2011. It was also established that the Landlord's agent served the Tenant with the Landlord's Notice of Hearing documents by handing the documents to the Tenant on November 2, 2011.

### **Issue(s) to be Decided**

- Should the One Month Notice to End Tenancy for Cause issued September 26, 2011, (the "Notice") be cancelled or upheld?

### **Background and Evidence**

The Landlord's agent testified that the Landlord served the Tenant with the Notice by regular mail sent September 26, 2011.

The Tenant testified that she received the Notice, but does not remember what day she received it. The Tenant's advocate stated that the Tenant came to see him about the Notice, but he does not remember on what day.

The Tenant's advocate stated that the Tenant had filed another application to cancel the Notice (the "former application") prior to filing her application that is before me today. He provided a file number, which I searched in our electronic filing system. I explained to the Tenant's advocate that the former application dealt with the Tenant's application

for a monetary order, an order that the Landlord comply with the Act and an order compelling the Landlord to perform repairs. The former application did not include an application to cancel the Notice. The former application was scheduled for October 25, 2011. The Tenant did not attend and therefore the former application was dismissed without leave to reapply.

The Landlord's agent requested an Order of Possession, effective December 31, 2011.

### **Analysis**

I accept the Landlord's agent's testimony that the Tenant was served with the Notice, pursuant to the provisions of Section 88(c) of the Act. Section 90 of the Act deems service in this manner to be effected five days after mailing the document. Therefore, I find that the Tenant received the Notice on October 1, 2011.

Sections 47(4) and (5) of the Act states:

#### **Landlord's notice: cause**

- 47** (4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.
- (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.

The Tenant filed her application to cancel the Notice on October 26, 2011, which is 25 days after she received the Notice. I asked the Tenant why she did not file her application within 10 days of receiving the Notice and her advocate replied that the Tenant was distracted by other issues: WCB and human rights. Section 66(1) of the Act provides that a time limit may be extended only in exceptional circumstances. The Tenant did not provide sufficient evidence of exceptional circumstances and in any event the Tenant did not apply for an extension of time to file her application.

Therefore, pursuant to the provisions of Section 47(5) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. The Tenant's application to cancel the Notice is dismissed.

Section 55(1) of the Act provides that the director must grant an order of Possession to the Landlord, if, at the time scheduled for the Hearing, the Landlord requests an Order of Possession and the director dismisses the Tenant's application.

The Tenant received the Notice on October 1, 2011, and therefore I find that the effective date of the Notice is November 30, 2011. Pursuant to the provisions of Section 53(1) of the Act the Notice is deemed to be changed to reflect the effective date of November 30, 2011. The Landlord's agent requested an Order of Possession effective December 31, 2011 and therefore I provide the Landlord an Order of Possession effective 1:00 p.m., December 31, 2011.

I find that the Landlord is entitled to recover the cost of the \$50.00 filing fee from the Tenant. Pursuant to the provisions of Section 72 of the Act, the Landlord may deduct \$50.00 from the security deposit.

### **Conclusion**

I hereby provide the Landlord an Order of Possession **effective 1:00 p.m., December 31, 2011**. This Order must be served on the Tenant and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlord may deduct **\$50.00** from the security deposit, in recovery of the cost of the filing fee from the Tenant.

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: November 23, 2011.

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Residential Tenancy Branch