



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for cause and to recover the cost of the filing fee from the Tenants for this application.

The parties appeared at the teleconference hearing and gave affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

1. Has a 1 Month Notice to Tenancy been issued and served upon the Tenants in accordance with sections 52 and 47 of the *Residential Tenancy Act* (the Act)?
2. If so, what date was it served to the Tenants?
3. If so, have the Tenant's filed to dispute the Notice?

### Background and Evidence

At the outset of the hearing the Tenant affirmed that the Landlord served her personally with both hearing packages on March 5, 2012 and that this service was late because she was told these documents had to be served within three days. I explained to the Tenant that although the Act does states hearing documents must be served within three days the Supreme Court has ruled this section of the Act has "no teeth" as there is no remedy provided in the Act if service is not conducted within the required three day period. I informed the parties that this application would proceed today, as I find that the Tenants were served within sufficient time to give them Notice of the proceeding and time to respond.

The parties agreed they entered into a fixed term tenancy agreement that began on June 15, 2011 and was set to expire after June 30, 2012. Rent is payable on the first of

each month in the amount of \$900.00 and the Tenants paid \$450.00 as the security deposit.

The Landlord affirmed that she personally served the female Tenant with the 1 Month Notice to End Tenancy (the Notice) on January 31, 2012 later in the day.

The Tenant stated that she did not receive the Notice until after she requested a copy of the Notice on February 24, 2012. Then she listed off the following dates and information:

- February 14, 2012 she received a letter under her door advising her of fire alarm inspections which she placed on her table. She noticed that a piece of paper was attached to the fire alarm notice which was a list of cleaning instructions for the end of the tenancy.
- February 21, 2012 she was confused about this notice of cleaning so she called the Landlord to ask about this because she did not end her tenancy.
- February 22, 2012 the Landlord called her back and told her she had been served the Notice. She did not know what to do so she called the *Residential Tenancy Branch* and they told her to ask for a copy of the Notice and make application to have the Notice cancelled.
- February 24, 2012 she received a copy of the Notice under her door from the Landlord.

I asked the Tenant why she requested a copy of the Notice when she repeated that she got the fire alarm notice February 14, 2012 and she was confused about the notice of cleaning she saw February 21, 2012. When I asked why she waited until February 22, 2012 to call the Landlord she stated she was confused and did not see the notice for cleaning until February 21, 2012.

The Landlord stated that she had arranged to have a witness who saw her personally serve the female Tenant the Notice on January 31, 2012. She referenced her evidence which included a written statement from the witness. The Landlord confirmed she did not give copies of this evidence to the Tenants as she was concerned about the personal information that was included. She requested that I call the cell phone number that was listed on the witness statement.

The witness was added to the hearing and he affirmed the Landlord approached him and asked him to witness her serve an eviction notice to the occupants of unit # 309. He stated that he was standing about ten feet away down the hall and he witness the Landlord knock on the door and hand the paper over.

I turned the floor to the Tenant and asked if she wished to ask the witness any questions to which she responded "I have no questions because I did not get the Notice".

The Landlord advised that she normally has a witness whenever she serves documents personally and normally the witnesses are one of her three employees. However on this date her employees had left already as they finish work at 4:30 p.m. and when the Tenants began fighting later in the day she had had enough so she issued the Notice and asked her witness, another tenant of the building, to watch her serve the Notice.

The Landlord confirmed she accepted rent for "use and occupancy only" in the amount of \$450.00 for the first half of March 2012. She is seeking an Order of Possession for as soon as possible.

### Analysis

Section 89 (2)(C) of the Act stipulates that an application by a landlord under section 55 (order of possession for the landlord), must be given to the tenant and may be left at the tenant's residence with an adult who apparently reside with the tenant.

In this case the evidence supports both hearing packages were served to the female Tenant, an adult who resides with the male Tenant. Accordingly I find both Tenants to have been sufficiently served Notice of this proceeding.

The Landlord confirmed she did not provide the Tenants with copies of all of their evidence which is in contravention of section 3.1 of the *Residential Tenancy Branch Rules of Procedure*. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore as the respondent Tenants have not received copies of the Landlord's documentary evidence I find that the Landlord's documentary evidence cannot be considered in my decision. I did however consider the Landlords' testimony and their witness's testimony.

Upon review of the 1 Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of section 52 of the Act and I find that it was served upon the Tenant in a manner that complies with section 89 of the Act.

I favor the evidence of the Landlord, who stated she personally served the Tenants with the 1 Month Notice to End Tenancy for Cause on January 31, 2012 in the presence of a witness, over the evidence of the Tenant who stated she never received the Notice until

February 24, 2012, after she requested a copy of the Notice. I favored the evidence of the Landlord over the Tenant, in part, because the Landlord's evidence was forthright and credible and supported by witness testimony.

In *Bray Holdings Ltd. V. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p. 174:

*The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The Test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness is such a case must be its harmony with the preponderance of the probabilities of which a practical and informed person would readily recognize as reasonable in that place and in those conditions.*

I find the Tenant's explanation of how she determined there was a Notice to end tenancy issued and why she later requested a copy to be improbable. Given that the Tenant claims to know the exact dates when she receives other documents from the Landlord, under her door, which she alleges not to read and places them on her table, and then knows the exact date of when she did decide to read them to be improbable. Furthermore I find it improbable that the Tenant waited to contact the Landlord to clarify the notice of cleaning. Rather I find that on a balance of probabilities it is reasonable to conclude that when the Tenant received the notice of cleaning she realized she failed to seek guidance about the Notice to end tenancy when she received it back on January 31, 2012, and that she pretended not to have received it, because she did not know about the witness standing down the hall. Then she sought advice from the *Residential Tenancy Branch* on what to do if she did not receive the Notice. I find the Landlord's explanation on why she requested the other tenant to witness the service of the Notice to be plausible given the circumstances presented to me during the hearing.

For all the aforementioned reasons, I find that the 1 Month Notice to End Tenancy was personally served to the female Tenant on January 31, 2012.

Section 47(4) of the Act stipulates that 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.

In this case the Tenants would have had to file their application for dispute no later than February 10, 2012. At the time the Landlord filed her application for an Order of Possession on February 28, 2012 the Tenants had not made application to dispute the Notice.

Section 47(5) of the Act stipulates that 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.

As per the aforementioned, I find this tenancy ended as of the effective date of the Notice, February 29, 2012, and I award the Landlord an Order of Possession.

The Landlord has been successful with their application; therefore I award recovery of the **\$50.00** filing fee.

#### Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenant**. This Order is legally binding and must be served upon the Respondent Tenant.

The Landlord may withhold the one time award of the **\$50.00** filing fee from the Tenants' 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: March 15, 2012.

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Residential Tenancy Branch