



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, OPL, ET, FF, O

### Introduction

This conference call hearing was convened in response to the landlord's application for an Order of Possession for Cause and for Breach of an agreement with the landlord; to end the tenancy early; 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.

At the outset, the landlord clarified that she did not serve the tenant with a notice to end tenancy and that she relies only on a request to end tenancy early under Section 56 of the Act. Therefore I dismiss the aspect of the landlord's application for an Order of Possession for Cause.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Should the tenancy end early?

Is the landlord entitled to recover the filing fee?

### Background and Evidence

The rental unit consists of shared accommodations in a single detached home where the landlord is another tenant who sub-let a room to the tenant subject to the dispute. Pursuant to a written agreement, the tenancy started on December 1, 2011 and the rent is \$500.00 per month.

The hearing lasted 98 minutes; therefore only the salient portions of the dispute will be transcribed in this decision.

The landlord testified that the tenant is dangerous and volatile, that he turns red in the face, is manipulative, threatening and harassing. She stated that his behaviour is a detriment to her health. In her documentary evidence, the landlord provided a medical note from a doctor, stating that the landlord's conflict with the tenant worsened the landlord's mental condition, and that the only solution to the problem is to evict the tenant.

The landlord called three witnesses who testified that the tenant's behaviour is inappropriate. Some characterized the tenant as a hypocrite, rude and intrusive; others as disrespectful and annoying, but all agreed that he has a negative impact on the landlord. The landlord also provided phone numbers of friends who can confirm these observations.

The tenant did not agree with this characterization by all accounts. He provided a different version of his interactions with the other tenants, and stated that their version is not factual.

The landlord provided a copy of the tenant's hand written notice to end tenancy which he gave the landlord on February 15, 2012, with an effective date of March 14, 2012. The tenant said that the landlord tore the notice. The landlord explained that she wanted to end the tenancy based on a signed Mutual Agreement to End Tenancy. She said that

the tenant gave her the form and that she signed it. She said that the tenant however refused to sign the form, and told her that he was not moving out.

The tenant questions whether he can be held accountable for the handwritten notice torn by the landlord.

### Analysis

Concerning an application for an order to end a tenancy early, Section 56(2) of the Act states:

*The director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession only if satisfied, in the landlord's application,*

*(a) The tenant or a person permitted on the residential property by the tenant has done any of the following:*

- (i) Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;*
- (ii) Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;*
- (iii) Put the landlord's property at significant risk;*
- (iv) Engaged in illegal activity that*
  - (A) Has caused or is likely to cause damage to the landlord's property,*
  - (B) Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or*
  - (C) Has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;*
- (v) Caused extraordinary damage to the residential property, and*

*(b) It would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 [landlord's notice: cause] to take effect.*

The landlord bears the burden to prove the grounds to end the tenancy. The landlord's evidence was vague and non-specific. Her testimony, her documentary evidence, or the witnesses' testimony did not identify any evidence of harassment, disturbance, or untoward behaviour as alleged. The parties' oral testimony is at complete odds and in these circumstances I have insufficient evidence to make an informed decision. As such I am left with considering the parties' documentary evidence as the most reliable evidence.

The tenant gave the landlord written notice to end the tenancy on February 15, 2012, with an effective date of March 14, 2012. The landlord tore the notice and emailed the tenant, stating that she would accept a mutual agreement to end the tenancy effective at the end of March. The tenant replied back that he would be out on March 14, 2012.

Regardless of the motives and reasons for ending the tenancy, I find that the tenant did give proper notice to end tenancy to the landlord, whether or not the landlord accepted that notice. If the tenant had no intentions to move out, a remedy for the tenant would have been to seek assistance through dispute resolution to resolve the issue rather than to give notice to end tenancy. I find that the tenant reiterated his intent to move out by giving the landlord another notice by email the same day.

On that basis, I find that the tenant ended the tenancy. Even if the landlord tore the first notice, I find that it was over her lack of familiarity with the Act and proper process, not because she wanted the tenant to remain. Further, regardless of the landlord's acceptance of the notice, the tenant is bound by his written declarations. Once signed, unless the landlord makes an application to dispute the notice, the tenant is obliged to the terms of his notice without modification.

I also note that the tenancy agreement is ambiguous; the landlord checked the portion indicating that the tenancy is month-to-month, yet it also indicates that the tenancy ends September 30, 2012. The tenant initialled that he would move out at the end of the term, but the landlord did not. In view of this confusion and lack of clarity, I consider that the tenancy is month-to-month.

Section 45(1) of the Act states in part that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord received the notice. Therefore the tenancy will end March 31, 2012.

#### Conclusion

The landlord's application to end the tenancy early is dismissed. I grant the landlord an Order of Possession effective March 31, 2012.

This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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 19, 2012.

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Residential Tenancy Branch