



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNC / OPC

### Introduction

This hearing was scheduled in response to an application by the tenants for cancellation of a 1 month notice to end tenancy for cause. Both parties participated in the hearing and gave affirmed testimony. During the hearing the landlords orally confirmed their wish to obtain an order of possession should the tenants' application not succeed.

### Issue(s) to be Decided

Whether either party is entitled to the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

Pursuant to a written tenancy agreement, the tenancy is variously described as a month-to-month tenancy beginning September 1, 2011, and as a fixed term tenancy from September 1, 2011 to March 31, 2012. In the case of the latter, the tenancy agreement states as follows:

Any continuation of the tenancy at the end of a fixed term requires the written consent of the landlord. At the end of the fixed term, the tenancy is finished and the tenant must vacate.

The tenancy agreement provides that monthly rent of \$1,600.00 is due and payable on the first day of each month. A security deposit of \$800.00 was collected.

The landlord issued a 1 month notice to end tenancy for cause dated May 28, 2012. The notice was served by way of posting on the tenants' door on June 1, 2012. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenants must vacate the unit is June 30, 2012. Reasons shown on the notice for its issuance are as follows:

Lease ended March 31, 2012.

Month to month April 1<sup>st</sup> as/per lease signed Sept. 1, 2011.

The tenant is repeatedly late paying rent.

The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has caused or is likely to cause damage to the landlord's property; 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 has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord.

The tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34.

The tenants filed an application to dispute the notice on June 1, 2012 at Service BC.

During the hearing the parties attempted to resolve this major aspect of their dispute.

### Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

Section 63 of the Act speaks to the **Opportunity to settle dispute**, and provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion led to a resolution and it was specifically agreed as follows:

### **RECORD OF SETTLEMENT**

- that the tenants will vacate the unit by not later than 1:00 p.m., Friday, August 31, 2012, and that an order of possession will be issued in favour of the landlords to that effect.

Further to the settlement reached between the parties, inquiries were raised during the hearing in regard to the landlords' access to the unit, as well as to the statutory provisions concerning service of documents. These inquiries are addressed below.

Section 29 of the Act speaks to **Landlord's right to enter rental unit restricted**, and provides, in part:

29(1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
  - (i) the purpose for entering, which must be reasonable;
  - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

Section 88 of the Act speaks to **How to give or serve documents generally**, and provides as follows:

88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mail box or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;

- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71(1) [*director's orders: delivery and service of documents*];
- (j) by any other means of service prescribed in the regulations.

Section 71 of the Act speaks to **Director's orders: delivery and service of documents**, as follows:

71(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 88 [*how to give or serve documents generally*] and 89 [*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 88 or 89 is sufficiently given or served for purposes of this Act.

Section 90 of the Act speaks to **When documents are considered to have been received**:

90 A document given or served in accordance with section 88 [*how to give or serve documents generally*] or 89 [*special rules for certain documents*] is deemed to be received as follows:

- (a) if given or served by mail, on the 5<sup>th</sup> day after it is mailed;
- (b) if given or served by fax, on the 3<sup>rd</sup> day after it is faxed;
- (c) if given or served by attaching a copy of the document to a door or other place, on the 3<sup>rd</sup> day after it is attached;

- (d) if given or served by leaving a copy of the document in a mail box or mail slot, on the 3<sup>rd</sup> day after it is left.

Conclusion

I hereby issue an **order of possession** in favour of the landlords effective not later than **1:00 p.m., Friday, August 31, 2012**. This order must be served on the tenants. Should the tenants fail to comply with the order, the 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: June 21, 2012.

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Residential Tenancy Branch