



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      For the tenant: CNC, RP  
                                 For the landlord: OPC

### Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the “Act”).

The tenant applied for an order cancelling a 1 Month Notice to End Tenancy for Cause (the “Notice”) and an order requiring the landlord to make repairs to the rental unit.

The landlord applied for an order of possession for the rental unit due to alleged cause.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally, refer to documentary evidence timely submitted prior to the hearing, and make submissions to me.

*Preliminary matter-* As a preliminary issue, I have determined that the portion of the tenant’s application dealing with a request for an order requiring the landlord to make repairs is unrelated to the primary issue of disputing the Notice. As a result, pursuant to section 2.3 of the Residential Tenancy Branch Rules of Procedure, I have severed the tenant’s application and dismissed that portion of the tenant’s request for that order, with leave to reapply.

The hearing proceeded only upon the tenant’s application to cancel a Notice to End Tenancy for Cause and the landlord’s application seeking an order of possession for the rental unit due to alleged cause

*2<sup>nd</sup> Preliminary matter-* The tenant provided testimony during the hearing; however the tenant was argumentative and aggressive during large portions of the hearing, despite repeated warnings.

Issue(s) to be Decided

1. Is the tenant entitled to an order cancelling the 1 Month Notice to End Tenancy for Cause?
2. Is the landlord entitled to an order of possession for the rental unit due to alleged cause?

Background and Evidence

I heard testimony that the tenant moved into the single room occupancy rental unit in mid April 2010, that monthly rent is \$525.00 and that the security deposit paid by the tenant was \$312.50.

The landlord submitted evidence that the tenant was served a 1 Month Notice to End Tenancy for Cause (the "Notice"), dated November 27, 2012, by posting it on the tenant's door on November 28, 2012, listing an effective end of tenancy of December 31, 2012. Section 90 of the Act states that documents delivered by posting on the door are deemed served three days later. Therefore the tenant was considered to have been served the Notice on December 1, 2012.

A notice to end the tenancy is not effective earlier than one month after the date the tenant receives the notice and the day before the day in the month that rent is payable under the tenancy agreement. In other words, one clear calendar month before the next rent payment is due is required in giving notice to end the tenancy. Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date is changed to January 31, 2013.

The causes as stated on the Notice alleged that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Notice informed the tenant that he had ten days to dispute the Notice or he was conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

The tenant applied to dispute the Notice on January 4, 2013, 36 days after he was deemed served with the Notice. By way of an explanation, the tenant said that he never received the Notice as he never saw it posted on his door. In his application, the tenant

said that he received the Notice on December 27, 2012, without explaining how he received it that day.

In response the landlord said that he attempted to hand deliver the Notice twice on November 27, 2012, but the tenant would not accept the Notice. Thereafter the landlord said he posted the Notice on the tenant's door on November 28, 2012, with tape.

The landlord said that he was present with an assistant property manager, who witnessed the posting.

I asked the landlord the witness' telephone number and dialed that witness into the telephone conference call hearing. The witness confirmed that the property manager attempted hand delivery of the Notice to the tenant, who refused acceptance, and he was with the property manager when the Notice was posted.

#### Analysis

Based on the relevant evidence, and on a balance of probabilities, I find as follows:

I considered the tenant's statement that he did not receive the Notice when it was posted on the door; however the property manager and his witness provided clear, consistent and convincing evidence that the tenant refused the Notice and that subsequently the Notice was posted on his door.

I find the tenant did not provide sufficient evidence to rebut the presumption that he was served with the Notice on or before December 1, 2012.

I therefore find upon a balance of probabilities that the tenant was served with the Notice to end the tenancy on or before December 1, 2012, and did not apply to dispute the Notice within 10 days of that date. Therefore pursuant to 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, January 31, 2013, and must move out of the rental unit.

I therefore dismiss the portion of the tenant's application seeking cancellation of the Notice and find that the landlord is entitled to an order of possession effective on the corrected effective date of the Notice, **January 31, 2013, at 1:00 p.m.**

This final, legally binding order of possession is enclosed with the landlord's Decision.

Should the tenant fail to vacate the rental unit pursuant to the terms of the order, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

### Conclusion

The tenant's application seeking an order cancelling a Notice to end tenancy is dismissed.

The portion of the tenant's application seeking an order requiring the landlord to make repairs is dismissed, with leave to reapply.

The landlord's application seeking an order of possession for the rental unit is granted.

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: January 31, 2013

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Residential Tenancy Branch

