



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Full Service Rentals  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant and two agents for the landlord.

While the tenant had indicated on his Application for Dispute Resolution that he is seeking a monetary order in the amount of \$2,695.00 he did not indicate on the Application the reasons he was seeking this monetary order. Specifically the tenant did not identify if he was seeking the reimbursement of money spent on emergency repairs or that it was money owed or compensation sought because the landlord has violated the *Residential Tenancy Act (Act)*, regulation or tenancy agreement.

From the written submissions of the tenant the monetary order he is seeking relates to food and lodging at another location and other assorted costs. As such, I find that these matters are sufficiently unrelated to the issue of the Notice to End Tenancy and pursuant to Rule 2.3 of the Residential Tenancy Branch Rules of Procedure I dismiss, with leave to reapply through a separate Application for Dispute Resolution, the monetary matters in the tenant's Application.

During the hearing, the landlords verbally requested an order of possession should the tenant be unsuccessful in his Application.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to Section 47 of the *Act*.

If the tenant is unsuccessful in his Application seeking to cancel the 1 Month Notice to End Tenancy for Cause it must be decided if the landlord is entitled to an order of possession, pursuant to Section 55 of the *Act*.

### Background and Evidence

The landlord provided into evidence a copy of a tenancy agreement signed by the parties on February 20, 2013 for a month to month tenancy beginning on March 20, 2013 for a monthly rent of \$500.00 due on the 1<sup>st</sup> of each month with a security deposit of \$250.00 paid.

The tenant submitted a copy of a 1 Month Notice to End Tenancy for Cause issued by the landlord on July 24, 2013 with an effective vacancy date of September 1, 2013 citing the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord and a security deposit or pet damage deposit was not paid within 30 days as required by the tenancy agreement.

The landlord testified that they served the Notice to the tenant on July 24, 2013. The tenant originally testified that he received it sometime prior to July 30, 2013 but he was not sure when it was. He did believe that it was not July 24, 2013 but he was not sure.

The landlord submits that the tenant, despite being given a copy of the landlord's bedbug policy in May 2013 failed to immediately report a bedbug problem in his rental unit; that when he did report it he failed to prepare the rental unit for treatment; and continues to leave boxed items from his rental unit in the hallways that the landlord believes still have bedbugs.

The landlord submits that the failure of the tenant to follow the required preparation has jeopardized the health and safety for the building. The landlord states that because they believe the tenant is the one that brought bedbugs into the residential property that he should be paying an additional security deposit and when he failed to do so the landlord issued the 1 Month Notice for these reasons.

The landlord submits that despite the instructions the tenant completed laundry prior to the dated of treatment as per the instructions and that he has some of his laundered items now boxed up in the hallways. The landlord submits that on July 19, 2013 at 8:15 a.m. they served the tenant with notice of their treatment that would be completed July 20, 2013 at 9:00 a.m.

The tenant was required, in the 24 hours from the notice, to get rid of soft fabric items such as extra clothing; extra bedding and pillows; furniture. The tenant was also required to pull away from the walls and pile in the centre of the room all remaining items.

### Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- a) The tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement; or
- b) The tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

Section 20 of the *Act* stipulates that a landlord must not require a security deposit at any time other than when the landlord and tenant enter into the tenancy agreement or require or accept more than one security deposit in respect of a tenancy agreement.

As such, despite the landlord's request for a second deposit, I find the landlord is not entitled to a second deposit requested 6 months after the tenancy began. Therefore, I find the landlord cannot end the tenancy for the tenant's failure to pay this second security deposit.

As to the landlord's position that the tenant has failed to comply with the requirements of the treatment plan to ensure containment of the bedbug infestation or the landlord's bedbug policy, I find the landlord provided the tenant with instructions and policy on how to prepare for treatment and that the tenant failed to prepare his unit adequately for treatment and that he completed some preparations prematurely.

However, I find that the landlord did not provide specific written instructions on what to do with belongings after they were laundered other than requiring that the laundry be done the same day as the treatment. The landlord did not provide rationale for the requirement to do the laundry on the same day as treatment if the laundered items were secured prior to the treatment day.

Section 47(2) stipulates that a notice to end the tenancy given under Section 47 must end the tenancy on a date that is not earlier than one month after the date the notice is received and the day before the day in the month, that rent is payable under the tenancy agreement.

Section 53 of the *Act* states if a landlord or tenant gives notice to end a tenancy with an effective date that does not comply with the requirements set out in the relevant section the party is seeking to end the tenancy under, the effective date is deemed to be changed to the earliest date permitted under the applicable Section.

While I am satisfied the tenant may have not cooperated fully with the landlord's requirement I also find that the tenant had been served with notice to end tenancy as declared by the landlord. Based on the testimony of both parties and the balance of probabilities, I find the notice was received by the tenant on July 24, 2013 and the effective date of the notice is amended to September 30, 2013, pursuant to Section 53 of the *Act*.

Section 47(4) of the *Act* stipulates that a tenant has 10 days after receiving a 1 Month Notice to End Tenancy for Cause to submit an Application for Dispute Resolution to

cancel that notice. Section 47(5) states that if a tenant fails to do make an Application in accordance with Section 47(4) the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice.

As the tenant did not submit his Application for Dispute Resolution until August 9, 2013, or 16 days after receiving the Notice to End Tenancy, I find that the tenant failed to file his application to dispute the 1 Month Notice within the 10 days granted under Section 47(4) of the *Act*. Based on the foregoing, I find the tenant is conclusively presumed under Section 47(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

Section 55(1) of the *Act* states if a tenant makes an Application for Dispute Resolution to dispute a landlord's notice to end tenancy, the director must grant an order of possession to the landlord if, the landlord makes an oral request for an order of possession and the director dismisses the tenant's Application or upholds the landlord's notice.

### Conclusion

I find the landlord is entitled to an order of possession, pursuant to Section 55 effective **September 30, 2013 after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be 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: September 16, 2013

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Residential Tenancy Branch

