



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding WESTSEA CONSTRUCTION LTD.  
and [tenant name suppressed to protect privacy]

## **Decision**

**Dispute Codes:** CNC, FF

### **Introduction**

This Application for Dispute Resolution by the tenant was seeking to cancel a One-Month Notice to End Tenancy for Cause dated August 27, 2013 served in person on August 27, 2013 and purporting to be effective on September 30, 2013.

The landlord and an advocate for the tenant were present. At the outset of the hearing, the tenant's advocate advised that the tenant is not present as she is under medical care in the hospital. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

The One-Month Notice to Notice to End Tenancy for Cause, a copy of which was submitted into evidence, indicated that the landlord is ending the tenancy for breach of a material term that was not corrected within a reasonable time after written notice.

### **Preliminary issue Landlord's Evidence**

The applicant tenant had served the Application and documentary evidence on the landlord and the landlord confirmed receipt of this material.

The landlord submitted an evidence package to Residential Tenancy Branch on September 30, 2013 and, according to the landlord, served the evidence package to the applicant tenant at the address in the tenant's Application for Dispute Resolution.

However, the tenant's advocate stated that this evidence was never received by the advocate, despite the fact that a written request was sent to the landlord asking them to forward copies any hearing documents or evidence directly to the advocate who is acting on behalf of the tenant. The tenant's advocate pointed out that the landlord is aware that the tenant suffers from a disabling condition and requires support in this and

other matters. The advocate pointed out that the tenant is currently in the hospital and there is no way to confirm what evidence was served on the tenant.

The landlord stated that they did get the advocates written communication requesting that the evidence be sent to the advocate. The landlord testified that they sought, and received, advice from Residential Tenancy Branch that it is the applicant's responsibility to provide documents to their representative. Therefore, the landlord chose not to serve a copy of their 66-page evidence package to the tenant's advocate.

I find that this tenant is genuinely disabled and the landlord is aware of this fact. I find that the missing evidence, although technically properly served on the applicant in accordance with the Act, unfairly places the tenant and her advocates at a disadvantage and that to continue the dispute resolution hearing under these conditions would deprive the applicant of administrative fairness and undermine natural justice.

It was therefore determined that the hearing would need to be reconvened to permit adequate service of the evidence on the applicant's advocate.

However, a mediated discussion ensued, the outcome of which was a mutual agreement between the parties to end the tenancy effective January 31, 2014.

Based on the agreement reached by the parties, I hereby issue an Order of Possession in favour of the landlord effective at 1:00 p.m. on Friday, January 31, 2014. The Order of Possession must be served on the tenant and her advocate and may be enforced through B.C. Supreme Court if necessary.

### **Conclusion**

The parties consented to end the tenancy on mutually agreed-upon terms and an Order of Possession is granted to the landlord based on this.

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: October 16, 2013

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Residential Tenancy Branch

