



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Westcorp Property Management Inc.  
and [tenant name suppressed to protect privacy]

## DECISION

### Dispute Codes

For the tenant: MT CNC CNR O  
For the landlord: OPC MNDC

### 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 to cancel a 1 Month Notice to End Tenancy for Cause, to cancel a 10 Day Notice for Unpaid Rent or Utilities, for more time to make an application to cancel a Notice to End Tenancy, and “other” with the following text “disputing price of damage deposit and lied about the damage that was done to unit.”

The landlord applied for an order of possession for cause, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

An agent for the landlord, JA, (the “agent”) attended the hearing. An opportunity was given to ask questions about the hearing process. Thereafter the agent gave affirmed testimony, was provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

The tenant did not attend the hearing. The tenant was provided with a copy of the Notice of a Dispute Resolution Hearing after filing her application dated September 18, 2013. The tenant, however, did not attend the hearing set for today at 11:00 a.m. The phone line remained open for fourteen minutes and was monitored throughout this time. The only party to call into the hearing was an agent for the landlord. Following the ten minute waiting period, **the application of the tenant was dismissed without leave to reapply**. The hearing continued with consideration of the landlord’s application.

The agent provided affirmed testimony that the Notice of a Dispute Resolution Hearing (the "Notice of Hearing") and evidence was served on the tenant by posting to the tenant's door on October 7, 2013. Documents served by posting to the door are deemed served three days later under section 90 of the *Act*. I find the tenant was sufficiently served under the *Act* as of October 10, 2013.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matter

At the outset of the hearing, the agent for the landlord requested to withdraw their monetary claim and seeks only an order of possession at this time. The landlord was permitted to withdraw the monetary portion of this claim and is at liberty to re-apply for that a monetary claim, however, withdrawing that portion of the claim does not extend any time limits under the *Act*.

### Issue to be Decided

- Is the landlord entitled to an order of possession under the *Act*?

### Background and Evidence

A copy of the written tenancy agreement was submitted by the landlord. A fixed term tenancy began on May 1, 2013 and is scheduled to expire on October 31, 2013, requiring vacant possession of the rental unit as of October 31, 2013. Monthly rent in the amount of \$750.00 was due on the first day of each month. The tenant paid a security deposit of \$375.00 at the start of the tenancy which the landlord continues to hold.

The agent testified that a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") dated August 28, 2013 was posted on the tenant's door on August 28, 2013 and the effective vacancy date is listed as September 30, 2013. The landlord listed two causes on the 1 Month Notice. The agent verbally requested an order of possession during the hearing as the tenants continue to occupy the rental unit.

### Analysis

Based on the documentary evidence and the undisputed testimony provided during the hearing, and on the balance of probabilities, I find the following.

**Order of possession** – I accept the undisputed testimony of the agent that the 1 Month Notice dated August 28, 2013 was posted to the tenant's door on August 28, 2013. Documents served by posting to the door are deemed served three days later under section 90 of the *Act*. Therefore, I find the 1 Month Notice was deemed served as of August 31, 2013. The effective vacancy date of the 1 Month Notice was September 30, 2013. The tenant continues to occupy the rental unit. Once the tenant's application was dismissed, and the agent requested an order of possession, I must grant the landlord an order of possession pursuant to section 55 of the *Act*. Therefore, **I grant** the landlord an order of possession effective **two (2) days** after service on the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

I do not find it necessary to consider the causes listed on the 1 Month Notice as the tenant's application was dismissed without leave to reapply.

### Conclusion

The tenant's application is dismissed without leave to reapply.

The landlord has been granted an order of possession effective two (2) days after service on the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 28, 2013

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Residential Tenancy Branch

