



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Real Flow Investments Inc.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

Landlord: OPC

Tenant: CNC, CNL, MNR, MNDC, OLC, ERP, PSF, LRE, RR

### **Introduction**

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession. The tenant sought to cancel two notices to end tenancy; an order to have the landlord make emergency repairs and repairs; an order to have the landlord provide services and facilities required by law; an order to suspend or set conditions on the landlord's right to enter the rental unit; an order to allow the tenant to reduce rent; and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord, his agent and the tenant.

At the outset of the hearing the tenant clarified that she had not received a 2 Month Notice to End Tenancy for Landlord's Use of Property. As such, I amend the tenant's Application to exclude the matter of seeking to cancel a notice to end the tenancy for landlord's use of the property.

As the landlord's Application was to deal solely with an order of possession based on a 1 Month Notice to End Tenancy for Cause and the tenant also seeks, in her Application, to cancel that 1 Month Notice, I find that the remainder of the tenant's Application seeking emergency repairs; repairs; requiring the landlord to provide services required by law; set conditions on the landlord's right to enter the rental unit; allowing the tenant to reduce rent and any compensation to be unrelated disputes to the main issue of whether or not the tenancy will continue.

Based on the above and in accordance with Residential Tenancy Branch Rule of Procedure 2.3 I dismiss the issues unrelated to the 1 Month Notice to End Tenancy for Cause with leave for the tenant to reapply.

On a number of occasions, during the hearing, the tenants was disruptive and argumentative to the hearing process, at one point she burst out laughing during the landlord's testimony. I cautioned the tenant on each of these occurrences that further disruptions may result in continuing the hearing without any input from the tenant. However, for the most part the hearing did continue with input from the tenant.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for cause, pursuant to Sections 47 and 55 of the *Residential Tenancy Act* (Act).

It must also be decided if the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to Section 47 of the Act.

Background and Evidence

Neither party provided a full copy of the tenancy agreement and did not agree on all of the details of the tenancy agreement. The parties disagree on whether the tenancy began on August 23 or August 24, 2013. The parties do agree that the tenancy was for a 1 year fixed term for the monthly rent of \$1,100.00 due on the 1<sup>st</sup> of each month with a security deposit of \$550.00 paid.

The landlord submitted into evidence the following relevant documents:

- A copy of an addendum to the tenancy agreement stipulating that no pets are allowed without approval;
- A warning letter dated September 6, 2013 advising the tenant that she had 5 days to have her 3 dogs removed from the property;
- A 1 Month Notice to End Tenancy for Cause issued on September 13, 2013 with an effective vacancy date of October 31, 2013 citing the tenant had breached a material term of the tenancy that was not corrected within a reasonable time after written notice to do so. The Notice specifies that the tenant had 10 days from receipt of the Notice to file an Application for Dispute Resolution if she wanted to dispute the Notice and that if she did not she would be presumed to have accepted the end of the tenancy and must vacate the property.

The landlord's agent testified that on the day the tenant signed the tenancy agreement was the first time the agent was made aware the tenant had 3 dogs. The agent's testimony was that when she informed the tenant that the landlord would not allow pets the tenant informed her that she would remove the pets.

The landlord submits that when he attended the property shortly after the dogs were still there and a letter of September 6, 2013 noted above was written and served to the tenant on September 6, 2013. When the tenant still failed to remove the dogs the landlord issued the 1 Month Notice to End Tenancy for Cause. The landlord testified the Notice was served by placing in the tenant's mailbox on September 13, 2013.

The tenant submits that she first was interested in the rental unit because it did not stipulate in the advertisement that there were no pets allowed. The tenant also

confirmed that she did not raise the fact that she had 3 dogs with the landlord's agent any time prior to agreeing to the tenancy.

The tenant testified that she was out of town working at the time she received the landlord's letter of September 6, 2013. In her written submission the tenant states that she quit her job to return to deal with this issue; in her verbal testimony she stated that she was fired as a result of have to return to town to deal with this issue. The tenant testified she returned to town on September 12, 2013.

The tenant first testified that she did not receive a 1 Month Notice to End Tenancy for Cause from the landlord at all. After several questions about it the tenant acknowledged that she had received the 1 Month Notice, however she could not remember specifically what date she received it.

The tenant stipulated that she received the September 6, 2013 letter from the landlord on September 6, 2013 and another letter from the landlord dated September 17, 2013 on September 17, 2013 but she could not remember when she received the September 13, 2013 1 Month Notice. She believes she may have received it on September 17, 2013. The tenant applied to dispute the Notice to End Tenancy on October 21, 2013.

The tenant testified that she had not submitted her Application for Dispute Resolution within 10 days because she was not aware that she only had 10 days and that she was attending school out of town and that she was working out of town during this period.

### Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if the tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

Section 47(4) goes on to say that within 10 days of receiving such a notice the tenant may dispute the notice by making an application for dispute resolution. Section 47(5) states that if a tenant who receives a notice under Section 47 does not file an application for dispute resolution within 10 days the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

As the tenant provided inconsistent testimony on a number of issues and has changed her testimony and submissions several times during the course of the hearing, I find that her testimony is unreliable, at best. Despite claiming that she was out of town working and attending school even though she had previously submitted that she lost her job I find the tenant has not provided any evidence that she had any extraordinary reasons for failing to file her Application within 10 days.

If I accept the tenant received the landlord's 1 Month Notice to End Tenancy for Cause on September 17, 2013 the tenant would have had until September 27, 2013 to submit

her Application to dispute the Notice. As the tenant did not file her Application until October 21, 2013 (at least 30 days after she received the Notice) I find, pursuant to Section 47(5) the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the residential property.

For these reasons I dismiss the tenant's Application in its entirety.

### Conclusion

I find the landlord is entitled to an order of possession effective **two days 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: November 07, 2013

---

Residential Tenancy Branch

