



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a 1 Month Notice to End Tenancy for Cause that was issued on July 8, 2013.

Both parties appeared, gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing

### Issues to be Decided

Should the 1 Month Notice to End Tenancy for Cause, issued on July 8, 2013 be cancelled?

### Background and Evidence

The parties agreed that the tenant received a 2 Month Notice to End Tenancy for Landlord's Use of Property issued on June 24, 2013, with an effective vacancy date of August 30, 2013. Filed in evidence is a copy of the 2 Month Notice.

The tenant testified that she did not dispute the 2 Month Notice and accepts that the tenancy will end on the effective vacancy date.

The parties agreed that later, the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause, issued on July 8, 2013, with an effective vacancy date of August 31, 2013. Filed in evidence is a copy of the 1 Month Notice.

The tenant testified that she does not consent to the withdrawal of the 2 Month Notice to End Tenancy. The tenant believes this is merely an attempt by the landlord not to have to pay her compensation as required by the Act.

### Analysis

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

In this case, the tenant had accepted that the tenancy was ending based on a 2 Month Notice to End Tenancy for Landlord's Use of Property, which was issued on June 24, 2013, and with an effective vacancy date of August 30, 2013. Under section 53 of the Act that effective vacancy date would automatically correct to August 31<sup>st</sup> as the 30<sup>th</sup> is earlier than the Act allows.

The evidence of the parties was that the landlord later served the tenant with a 1 Month Notice to End Tenancy for Cause, issued on July 9, 2013, with the same effective vacancy date of August 31, 2013.

Filed in evidence is a copy of the 1 Month Notice, the landlord writes on the notice, "This notice cancels the previous 60 day notice that was given – Aug rent is due Aug 1/2013"

[Reproduced as written]

The Residential Tenancy Policy Guideline 11, Amendment and Withdrawal of Notices, states:

A landlord or tenant cannot unilaterally withdraw a Notice to End Tenancy. With the consent of the party to whom it is given, but only with his or her consent, a Notice to End Tenancy may be withdrawn or abandoned prior to its effective date. A Notice to End Tenancy can be waived (i.e. withdrawn or abandoned), and a new or continuing tenancy created, only by the express or implied consent of both parties.

The Act and Policy Guideline do not allow a landlord to withdraw a notice to end tenancy unless the tenant consents. The 2 Month Notice was the first notice served on the tenant, and the tenant had accepted that the tenancy ends on the corrected effective vacancy date.

As a result, I find it is not necessary to hear the merits on the 1 Month Notice to End Tenancy for Cause, as the tenancy is ending based on the 2 Month Notice to End Tenancy for Landlord's Use of Property.

Therefore, I find the only valid notice is the 2 Month Notice to End Tenancy for Landlord's use of Property, issued on June 24, 2013.

As the 2 Month Notice to End Tenancy is in effect, the tenant must move out on the corrected effective vacancy date. The parties agreed the landlord is entitled to an order of possession, effective **August 31, 2013 at 1:00 pm**.

As the tenant was successful with their application, I find the tenant is entitled to recover the cost of the filing fee from the landlord. The tenant has established a total monetary claim of **\$50.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### Conclusion

I grant the tenant's application to cancel the 1 Month Notice to End Tenancy for Cause, issued on July 8, 2013.

The tenant is granted a monetary order to recover the cost of filing their application.

The landlord is granted an order of possession based on the 2 Month Notice to End Tenancy for Landlord's use of Property, issued on June 24, 2013.

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: August 19, 2013

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Residential Tenancy Branch

