



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

OPC, FF, CNC

### Introduction

This hearing dealt with applications from both the landlord and the tenants. The landlord applied for an order of possession and to recover the RTB filing fee. The tenants applied to cancel a notice to end tenancy and to recover the RTB filing fee.

Both the landlord and one of the tenants attended the teleconference hearing and gave evidence. The landlord was also represented by an agent.

### Issue(s) to be Decided

Did the tenant file his Application for Dispute Resolution after the statutory time limit for doing so?

If so, is the landlord entitled to an order of possession?

If the tenant did not file after the statutory time limit, should the notice to end tenancy be cancelled?

If not, is the landlord entitled to an order of possession?

### Background and Evidence

The landlord gave evidence that his son served the tenants with a Notice to End Tenancy for Cause (the "Notice") by putting the Notice in the tenants' mailbox in mid-January 2014. The landlord says the mailbox is attached to the wall and is located about one foot from the tenants' front door. According to Section 90, a notice served in this manner is deemed to have been received by the tenants three days later.

The Notice is dated January 14, 2014 and specifies the following reasons for the Notice:

- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord
- Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk
- Tenant has engaged in illegal activity that has, or is likely to damage the landlord's property

- Tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
- Tenant has caused extraordinary damage to the unit/site or property/park
- Tenant has not done required repairs of damage to the unit/site

The Notice specifies a move-out date of February 14, 2014.

The tenant gave evidence that he receives his mail in the mailbox by the front door. However, he gave evidence that he did not receive the Notice that the landlord says was served in mid-January 2014. The tenant says he first saw the Notice when he received a package in the mail on March 10, 2014 containing the Notice of a Dispute Resolution Hearing and Landlord's Application for Dispute Resolution. The tenant filed a Tenant's Application for Dispute Resolution on March 10, 2014.

The landlord's agent gave evidence that the tenants were served with the Notice of a Dispute Resolution Hearing and Landlord's Application for Dispute Resolution by registered mail on February 28, 2014. The landlord's agent provided Canada Post tracking numbers which indicate the packages were delivered to the tenants on March 5, 2014.

The tenant gave evidence that the landlord returned their post-dated cheques for March, April, and May 2014 to them on February 4, 2014. The tenant also gave evidence that the landlord came to the property on February 12, 2014 to ask the tenants why they had not moved yet.

The landlord's agent gave evidence that the landlord's reasons for ending the tenancy stem from the tenant keeping a large number of vehicles on the rental property. The landlord provided copies of two letters from the City of Surrey both dated February 7, 2013. One letter states that a recent inspection has revealed at least one "wrecked vehicle" on the property, that no wrecked vehicles are permitted to be parked or stored outside a building, and asking the landlord to remove any such vehicle by February 21, 2013. The other letter states that a recent inspection has revealed that excess vehicles are being parked on the property and asking the landlord to remove excess vehicles by February 21, 2013.

The landlord's agent gave evidence that the property resembles a junkyard and the excess vehicles, some of which are not driveable, are causing extraordinary damage to the rental property.

The tenant gave evidence that he has an ice cream business in the summertime and stores five ice cream trucks and two cube vans during the nine months the business is not operating. His evidence is that the property is about two acres and these vehicles are stored against the back fence. His evidence is that the property is covered in pine trees and the ground is covered with pine needles not grass. For that reason, he says the vehicles are not causing damage to the property.

The tenant gave evidence that the landlord told him the landlord had no problem with the vehicles as long as the issue could be sorted out with City of Surrey. The tenant's position is that the landlord wishes to break their three-year lease, which ends December 31, 2015.

The landlord joined the hearing after the tenant gave evidence about his ice cream business. The landlord gave evidence that he has seen about 40 vehicles on the property. His evidence is that his neighbours have complained to the City of Surrey about the problem. His evidence is that he has spoken to the tenant many times about the vehicles; the tenant has promised to move the vehicles but has not done so. The landlord's evidence is that they are "total loss vehicles" including cars, vans, and pick-up trucks. He said the City of Surrey has told him they will take him to court if the vehicles are not removed.

The tenant gave reply evidence that there are about 30 vehicles, not 40. He says that in addition to the ice cream vehicles, there are about 20 – 25 other vehicles. He says the other vehicles are all in running order but some have been in accidents and all require repair. His evidence is that he has a business repairing vehicles.

### Analysis

According to Section 47(4), a tenant who receives a notice to end tenancy for cause may dispute the notice by making application for dispute resolution within 10 days after the date the tenant receives the notice. A tenant who does not make application for dispute resolution within 10 days 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.

At issue is whether the tenants received the Notice that the landlord says was left in the tenants' mailbox in mid-January 2014.

I prefer the evidence of the landlord to that of the tenant, because I found the tenant to be a less than credible witness. When asked about the excess vehicles on the property, the tenant initially only disclosed the seven vehicles related to the ice cream business and said nothing about the other vehicles, which number at least 20. It was only after the landlord joined the hearing and stated there were about 40 vehicles on the property, that the tenant admitted the existence of the other vehicles. For this reason, I found the tenant to be evasive in relating his evidence. I also find it unlikely that anyone removed the Notice from the mailbox before the tenants could find it.

For those reasons, I find the tenants received the Notice three days after it was served in mid-January 2014. The tenants did not apply for dispute resolution until March 10, 2014, well after the 10-day statutory deadline.

Pursuant to Section 47(5), the tenants are conclusively presumed to have accepted that the tenancy ended on February 14, 2014. For that reason, the tenants' application is dismissed.

Since the tenancy ended on February 14, 2014, the landlord is entitled to an order of possession. I grant the landlord an order of possession which must be served on the tenants. Should the tenants fail to comply with the order, it may be filed for enforcement in the Supreme Court.

The landlord is also entitled to recover his RTB filing fee of \$50.00. I order that the landlord retain \$50.00 from the tenants' security deposit.

Conclusion

The tenants' application is dismissed. I grant the landlord an order of possession. The landlord may retain \$50.00 from the security deposit.

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: April 16, 2014

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Residential Tenancy Branch

