



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes            CNC

### Introduction

This hearing was scheduled to deal with a tenant's Application to cancel a 1 Month Notice to End Tenancy for Cause. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Preliminary and Procedural Matters

In filing his Application, the tenant indicated he was making the Application under the *Residential Tenancy Act*; however, the parties described the rented premises as a trailer site and that the trailer on the site belongs to the tenant. I determined that it is the *Manufactured Home Park Tenancy Act* that applies to this tenancy and I amended the Application with consent.

I noted that the tenant indicated the rental site as being site #8 on his Application but the landlord had indicated the rental site as being #9 on the 1 Month Notice to End Tenancy for Cause that is the subject of this dispute. The tenant confirmed that he made an error and that the Application should reflect #9 as being the rental site. I amended the Application accordingly.

The Act provides that a tenant may file to dispute a 1 Month Notice within 10 days of receiving the Notice. Both parties testified that the 1 Month Notice was served upon the tenant in person on March 26, 2015. Since the tenant received the 1 Month Notice on March 26, 2015 and the 10 day limit fell on a weekend, the deadline for filing this Application was the following business day which was April 7, 2015 in this case. I noted that the tenant's Application was accepted by the Branch on April 9, 2015.

The tenant stated that the Residential Branch was closed for the Easter long weekend (April 3 – 6, 2015) and he came in to the Branch on April 7, 2015 to file his Application. It appears that the tenant signed the Application for Dispute Resolution on April 7, 2015 but the tenant signed the Application to Waive Filing Fee on April 9, 2015. I asked the tenant to explain why there was a two day delay in signing the Application to Waive Filing Fee and providing the Branch with proof of income. The tenant explained that he had to work on April 8, 2015 which is why he did not return to the Branch until April 9, 2015.

The Rules of Procedure apply to all Applications for Dispute Resolution. Below, I have reproduced the Rules relevant in this case:

**2.4 Submit application for dispute resolution**

An applicant for dispute resolution must submit an application for dispute resolution with the required fee or fee waiver documents.

**2.6 Point at which an application is considered to have been made**

The application for dispute resolution has been filed when it has been submitted and the fee is paid or all documents for a fee waiver are submitted to the Residential Tenancy Branch directly or at a Service BC office.

In applying the above Rules, I find that the tenant's Application was filed on April 9, 2015 since that is the date he provided the fee waiver documents for his Application.

Section 59(1) of the Act does provide that an Arbitrator may grant an extension of time to file an Application; however, an extension may be granted "only exceptional circumstances". I found the tenant's reason that he had to go to work on April 8, 2015 did not explain why the Application and fee waiver documents could not be completed on or before April 7, 2015 and I found his decision to go to work on April 8, 2015 rather than obtain fee waiver documents is not an exceptional circumstance. Therefore, I did not grant an extension in this case.

Since the tenant did not file to dispute the 1 Month Notice within the time limit for doing so, I dismissed his Application.

The landlord orally requested an Order of Possession during the hearing.

Near the end of the teleconference call the tenant became irate and began yelling into the phone. The teleconference call was then ended.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Background and Evidence

It was undisputed that the tenant is required to pay rent on or before the 1<sup>st</sup> day of every month and that the tenant was served with a 1 Month Notice to End Tenancy for Cause, in person, on March 26, 2015, with a stated effective date of April 30, 2015.

The tenant's application to dispute the Notice was dismissed during the hearing and the landlord orally requested an Order of Possession effective May 31, 2015. The landlord explained that rent was sent to the landlord and the landlord accepted it since this dispute resolution hearing

was scheduled for the latter part of the month of May 2015 and the tenant was still occupying the site.

### Analysis

Since a dispute resolution hearing was scheduled for this date; the tenant was still occupying the site in May 2015; and, the landlord had served evidence in support of the eviction, I am satisfied that the landlord's acceptance of rent for the month of May 2015 was reasonable in the circumstances and that the landlord did not otherwise act in such a way so as to communicate reinstatement of the tenancy. Therefore, I proceed to consider whether the landlord is entitled to an Order of Possession.

Section 48(1) of the Act provides that an Order of Possession shall be granted to a landlord where:

- The tenant files to cancel a Notice to End Tenancy and the application is dismissed; and,
- The landlord orally requests an Order of Possession during the scheduled hearing.

I am satisfied that the criteria of section 48(1) have been met and I provide the landlord with an Order of Possession effective at 1:00 p.m. on May 31, 2015 as requested.

### Conclusion

The tenant's application was dismissed. The landlord has been provided an Order of Possession effective at 1:00 p.m. on May 31, 2015.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Manufactured Home Park Tenancy Act*.

Dated: May 20, 2015

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Residential Tenancy Branch

