



# 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 the tenant's application pursuant to the *Residential Tenancy Act* ("the *Act*") for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47 and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The tenant left the teleconference at 9:46 am despite the conference continuing until 9:54 am. While all parties were still in attendance at this hearing, the tenant confirmed receipt of the landlord's 1 Month Notice served April 7, 2015 by posting on the door. The landlord confirmed receipt of the tenant's Application for Dispute Resolution package to cancel the 1 Month Notice served April 17, 2015 by registered mail.

### Preliminary Issue – Late Evidence

The landlord also testified that on May 28, 2015, 6 days prior to this hearing, he submitted an evidence package containing 21 pages of material. That evidence package was confirmed received by the tenant although he testified that he did not have an opportunity to respond to this latest package. I note that the package includes;

- a four page typewritten submission by the landlord;
- a copy of the residential tenancy agreement pertaining to this tenancy;
- a copy of the tenant's application for dispute resolution;
- a copy of a previous Residential Tenancy Branch decision dated January 12, 2015 with respect to these two parties;
- a copy of the tenant's note to the landlord that he hurt his arm; and
- a copy of a letter previously provided to the tenant by the landlord dated February 3, 2015.

I note that, on the tenant's Application for Dispute Resolution in this matter, the tenant provided a copy of the 1 Month Notice for Cause. I further note that, pursuant to the Dispute Resolution Rules of Procedure, it is crucial that a hearing be both fair and efficient. To ensure a fair hearing for all parties, the tenant was asked to verbally provide submissions indicating any materials that he would submit to contradict or counter the landlord's evidence package. The tenant did not identify any documentary evidence that he would submit if given the opportunity.

The Dispute Resolution Rules of Procedure require that materials are submitted to the Residential Tenancy Branch and to the other party as soon as practicable. Rule 3.17 provides that evidence not provided to the other party in accordance with the Rules may or may not be considered by the Arbitrator. The Arbitrator has the discretion to determine whether to accept evidence that was not available at an earlier time and both parties must have the opportunity to be heard on the question of accepting late evidence. The tenant's submissions focussed on an inability to respond to the materials submitted. This is a legitimate consideration under the *Act*. However, in this particular set of circumstances, the tenant acknowledged that he also had a copy of the residential tenancy agreement and his copy of his own application for dispute resolution as well as the previous decision with respect to these parties as well as his note to the landlord regarding his arm and the letter dated February 3, 2015 from the landlord to the tenant. The only item that the tenant had not previously viewed was the four page submission of the landlord. I determined that the landlord's evidence was relevant and useful to reaching a determination in this matter. I accepted the evidence and advised the tenant that he would be allowed to make submissions that specifically addressed all parts of the landlord's written submissions, making his own written submissions if he felt compelled to do so at the end of the hearing.

#### Issue(s) to be Decided

Should the 1 Month Notice to End Tenancy be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to recover the filing fee for this application from the landlord?

#### Background and Evidence

This tenancy began in 2008, according to the testimony of the tenant. While the landlord submitted a written tenancy agreement that began March 1, 2011, the landlord agreed that the tenant's testimony is likely accurate. The landlord testified that his elderly father had previously acted as landlord for the residential premises and he likely did not prepare a written tenancy agreement at the outset of the tenancy.

By way of background, the landlord testified that when he took over care of this building, he acquired a substantial loan for substantial amount of overdue repairs, working with each tenant to accommodate the repair work. The landlord testified that his first attempts to have this tenant vacate the rental unit temporarily were moderately successful. He testified that, after initially positive communications, the tenant stopped responding to the landlord. The landlord testified that ongoing attempts to communicate have been met with either no response or an unsatisfactory response.

The landlord testified that the tenant had agreed to vacate the rental unit on March 2, 2015 on a temporary basis to allow for repairs. The landlord provided previous Residential Tenancy Branch ("RTB") decisions with respect to this tenancy, particularly referring to the most recent decision dated February 17, 2015. That decision outlined a settlement between the landlord and tenant pursuant to section 63(2) of the Act as follows;

*At the hearing the parties reached a settlement and they asked that I record the settlement pursuant to section 63(2) of the Residential Tenancy Act as follows:*

- a. The tenant shall vacate the rental unit for the purpose of giving the landlord access to do the renovation work by March 2, 2015 and shall advise the landlord when he leaves.*
- b. The tenant shall remove all of the contents of the bathroom, the passageway area between the entrance, the kitchen and the bathroom and the front hall/entrance in order to facilitate the renovation work;*
- c. The tenant shall remove all valuables from the rental unit;*
- d. The tenant shall be responsible for storing and covering his furniture and other belongings in a location in the rental unit that will not interfere with the renovation work;*
- e. The tenant shall pay the rent when due for the month of March;*
- f. The tenant reserves the right to file a monetary claim against the landlord for the reduced value of the tenancy caused by the renovation work and the disruption that it has caused;*
- g. The landlord reserves the right to claim against the tenant any losses incurred because the tenant failed to vacate the rental unit by February 2, 2015 as demanded by the landlord.*

**(emphasis added)**

The landlord testified that, on two separate occasions, he attended to the tenant's rental unit with a contractor to evaluate and begin work on the rental unit. On the first occasion, the tenant stated that he was not able to relocate and had, in fact, changed

his mind. After supplying the tenant with a copy of the previous RTB decision, the landlord re-attended the tenant's rental unit again on another day. At that time the tenant appeared at the door with his arm in a sling. According to the testimony of the landlord and the property manager, the tenant stated that he could not move as he had injured his arm and had no one to help him pack his belongings. The landlord requested that the tenant provide a doctor's note with respect to his injury and a timeline for recovery to reschedule the renovations within the suite. Neither were provided to the landlord as of the date of this hearing.

The landlord's witness/onsite property manager testified that he lives directly below the tenant and is available for contact during daytime hours. The landlord testified that he has attempted to contact the tenant by; email; text message; telephone and voicemail; as well as by attending to the rental unit to speak to the tenant. He testified that he has always been prepared to have the tenant relocate temporarily and has made a variety of attempts to make new arrangements with the tenant for renovations within his rental unit. He testified that he has had no response at all from the tenant.

The landlord issued a 1 Month Notice to the tenant citing "non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order". The tenant applied to cancel the notice to end tenancy, stating that he would relocate for repairs as soon as "medically cleared". In testimony, the tenant stated that he believes the landlords will not allow him to return to the rental unit if he relocates.

### Analysis

I dismiss without leave to re-apply the tenant's application to cancel a notice to end tenancy and recover the filing fee for this application. When a tenant applies to cancel a notice to end tenancy, the burden shifts to the landlord to show on a balance of probabilities that an end to the tenancy is justified. In this matter, the landlord relies on section 47( ) of the Act that states,

**47** (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*

*(l) the tenant has not complied with an order of the director within 30 days of the later of the following dates:*

*(i) the date the tenant receives the order;*

*(ii) the date specified in the order for the tenant to comply with the order.*

The landlord has shown that there exists a previous order with respect to this tenant and this tenancy. At the original RTB hearing, the arbitrator relied on section 63(2) in making a decision. Section 63(2) states

**63** (2) If the parties settle their dispute during dispute resolution proceedings, the director may record the settlement in the form of a decision or an order.

The landlord has shown that the tenant has not complied with this order by way of settlement within 30 days of the date specified in the order. At no point did the tenant deny that he received a copy of the decision dated February 17, 2015.

Based on the tenant's failure to act in compliance with the previous decision and order, I find that the landlord's 1 Month Notice to End Tenancy for Cause is valid and justified in the circumstances.

Pursuant to section 55 of the *Act*, the landlord applied for an Order of Possession.

**55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

I find that the landlord is entitled to a 2 day Order of Possession. I grant the landlord an Order of Possession to be effective two days after notice is served to the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I dismiss without leave to re-apply the tenant's application to cancel a notice to end tenancy and recover the filing fee for this application.

### Conclusion

I dismiss without leave to re-apply the tenant's application to cancel a notice to end tenancy and recover the filing fee for this application.

I grant the landlords an Order of Possession to be effective two days after notice is served to the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

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: June 17, 2015

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Residential Tenancy Branch

