



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, OPB, MNR, FF; MT, CNC, ERP, LRE, OPT, AAT, LAT, AS

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for unpaid rent and breach of an agreement pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

This hearing also dealt with the tenant's application pursuant to the Act for:

- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 66;
- cancellation of the landlord's 1 Month Notice pursuant to section 47;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order requiring the landlord to return the tenant's personal property pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order of possession of the rental unit pursuant to section 54;
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order allowing the tenant to assign or sublet because the landlord's permission has been unreasonably withheld pursuant to section 65; and

- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

The tenant did not attend this hearing, although I waited until 1121 in order to enable the tenant to connect with this teleconference hearing scheduled for 1100. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

At the hearing the landlord made an oral request for an order of possession in the event I dismissed the tenant's application to cancel the 1 Month Notice.

The landlord testified that he received the tenant's dispute resolution package on 19 May 2015. The landlord was provided with the tenant's dispute resolution package by a mutual friend.

#### Preliminary Issue – Service of Landlord's Dispute Resolution Package

The landlord filed his application 20 May 2015 through a Service BC office. The landlord did not provide any telephone number in his application. Service BC was unable to contact the landlord to advise the landlord that the Notice of Dispute Resolution Hearing for his application was prepared and ready to pick up. The landlord never retrieved the Notice of Dispute Resolution Hearing from the Service BC office. As a result the landlord never served the tenant with notice of his application and hearing time.

As the landlord failed to serve the tenant with the landlord's dispute resolution package, the landlord's application is dismissed with leave to reapply.

#### Preliminary Issue – Tenant's Onus

In the tenant's application the tenant has the onus of proving, on a balance of probabilities, his claim with the exception of the application to cancel the 1 Month Notice.

Rule 10.1 of the Rules of Procedure provides that:

**10.1 Commencement of the hearing** The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

Accordingly, in the absence of any evidence or submissions from the tenant and in the absence of the tenant's participation in this hearing, I order the following claims in the tenant's application dismissed without leave to reapply:

- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 66;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order requiring the landlord to return the tenant's personal property pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order of possession of the rental unit pursuant to section 54;
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order allowing the tenant to assign or sublet because the landlord's permission has been unreasonably withheld pursuant to section 65; and
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

#### Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

#### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the landlord, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around it are set out below.

The tenant and landlord are brothers. In 2005, the tenant and landlord inherited the residential property from their parents. Early this year, the parties entered into an agreement whereby the landlord purchased the tenant's portion of the residential property from the tenant. The landlord testified that he purchased the tenant's portion at

fair market value. The landlord testified that the tenant received independent legal advice with respect to the sale of the property.

As a result of the sale, the tenant and landlord entered into a written tenancy agreement. I was not provided with a copy of this agreement by either party. The landlord testified that commencing 1 January 2015, the tenant agreed to pay the landlord \$700.00 in monthly rent on the first of every month. The landlord testified that he received rent payments for January, February and March.

The landlord testified that on or about 25 March 2015, the tenant made threats against the landlord. The landlord testified that the police attended and arrested the tenant.

On 30 March 2015, the landlord prepared the 1 Month Notice. The 1 Month Notice set out an effective date of 1 May 2015. The 1 Month Notice set out that it was given because:

- the tenant or person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord;
  - seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and
- the tenant breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord testified that he hired a process server to serve the tenant. The landlord testified that the process server personally served the tenant with the 1 Month Notice on 2 April 2015.

The tenant applied for dispute resolution 7 May 2015.

### Analysis

Subparagraph 47(1)(d)(i) of the Act permits a landlord to terminate a tenancy by issuing a 1 Month Notice in cases where a tenant or person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property. Subparagraph 47(1)(d)(ii) of the Act permits a landlord to terminate a tenancy by issuing a 1 Month Notice in cases where a tenant or person permitted on the residential property by the tenant seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant. Paragraph 47(1)(h) of the Act sets out that a landlord may end a tenancy where the tenant has failed to comply with a material term and the tenant has

not corrected the situation within a reasonable time after the landlord gives written notice to do so.

Subsection 47(2) of the Act permits a landlord to set an effective date to end the tenancy, at the earliest, the later of one month after the notice is received and the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Pursuant to subsection 47(2), the earliest effective date for the 1 Month Notice served on 2 April 2015 would be 31 May 2015. The landlord has set an effective date in the 1 Month Notice of 1 May 2015. This effective date is too early. Section 53 operates in this case to change the effective date to 31 May 2015.

Pursuant to subsection 47(5) of the Act, a tenant is conclusively presumed to have accepted a tenancy ends where the tenant does not apply for dispute resolution within ten days of receiving the notice.

- (5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant
  - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
  - (b) must vacate the rental unit by that date.

The landlord provided uncontested testimony that the tenant threatened him. Furthermore, the tenant did not apply for dispute resolution within ten days of receiving the 1 Month Notice. The tenant's application for more time to dispute the 1 Month Notice was dismissed. As such the tenant is conclusively presumed to have accepted that the tenancy ended on 31 May 2015, the corrected effective date of the notice. On this basis, the tenant's application to cancel the 1 Month Notice is dismissed without leave to reapply.

Pursuant to subsection 55(1), where an arbitrator dismisses a tenant's application or upholds the landlord's notice and the landlord makes an oral request for an order of possession at the hearing, an arbitrator must grant the landlord an order for possession. As the tenant's application is dismissed and the landlord has made an oral request for an order of possession, I am obligated by the Act to grant the landlord an order of possession. This order of possession is effective two days after it is served upon the tenant(s). This order may be served on the tenant(s), filed with the Supreme Court of British Columbia and enforced as an order of that court.

Conclusion

The landlord's application is dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

The tenant's application is dismissed without leave to reapply.

I grant an order of possession to the landlord effective two days after service of this order on the tenant(s). Should the tenant(s) fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: June 05, 2015

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Residential Tenancy Branch

