



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, MNDC, LAT, FF, O

### Introduction

This hearing was convened by way of a conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant to: cancel a notice to end tenancy for Landlord’s use of property; for money owed or compensation for damage to loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement; to change the locks on the rental unit; to recover the filing fee; and for “Other” issues.

An agent for the Landlords, who is also the property manager, and the Tenant appeared for the hearing and provided affirmed testimony. The Landlords’ agent confirmed that the Landlords received the Tenant’s Application and his documentary evidence. The Tenant confirmed receipt of the Landlords’ documentary evidence. No issues in relation to the service of the documents under the Act and the Rules of Procedure were raised by the parties during the hearing.

At the conclusion of the hearing the Landlords’ agent made an oral request for an Order of Possession.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence provided. While I have considered the evidence provided by the parties in this case, I have only documented that evidence which I relied upon to make findings in this Decision.

### Issues to be Decided

- Did the Tenant make the Application with the time limits set out by the Act to cancel the Notice to end tenancy?
- If not, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to a Monetary Order and to change the locks?

### Background and Evidence

The parties agreed that this tenancy started on January 5, 2015 on a month to month basis. A written tenancy agreement was completed which established rent in the amount of \$800.00 payable on the first of each month and \$25.00 payable for internet. The Tenant paid the Landlord a security deposit in the amount of \$400.00 at the start of the tenancy which the Landlord still retains. The Landlord confirmed there are not rental arrears in this tenancy.

The Tenant testified that he received a 2 Month Notice to End Tenancy for Landlord's Use of the Property (the "Notice") on July 12, 2015. The Notice was provided into written evidence and shows an effective vacancy date of September 30, 2015 for the reason that the Landlords want to covert the rental unit for use by the caretaker, manager or superintendent for the residential property.

The Tenant testified that he applied to dispute the Notice on July 16, 2015. However, the Tenant testified that he received no contact from the Service BC office where he made the Application informing him that the Notice of Hearing documents were ready to pick up and serve to the Landlord. However, the Tenant acknowledged that he did receive a call from the Residential Tenancy Branch Information Line but he was unable to answer it as he was in a meeting.

The Tenant testified that he called the Information Line on August 5, 2015 who informed him that his Application had been closed and marked as abandoned because the Tenant had failed to pick up the Notice of Hearing documents which were sent to the Service BC office. As a result, the Tenant re-applied on the same day, August 5, 2015, to dispute the Notice.

### Analysis

In make findings in this matter, I must first turn my mind to whether the Tenant has applied to dispute the Notice in accordance with the Act. Section 49(8) of the Act provides that a tenant has 15 days to make an Application to dispute a Notice. The Tenant confirmed that he received the Notice on July 12, 2015 from the Landlord. Therefore, the Tenant would have had until July 27, 2015 to make his Application.

The Tenant explained that he made his Application on July 16, 2015 and allowed me to look up the file number relating to this Application on the Residential Tenancy Branch file system. The electronic notes for this file number (which appears on the front page of this Decision), indicates that the Tenant was called about picking up the Notice of

Hearing documents for the first Application and an additional call was made on August 22, 2015. However, there was no facility on the Tenant's phone number he had provided to leave a voice mail.

The Tenant acknowledged that he did receive a call from the Residential Tenancy Branch but he was unable to take this as he was in a meeting. However, the Tenant did not call back to the Residential Tenancy Branch until August 5, 2015, being 20 days later. By this time his first Application had been marked as abandoned and closed. Therefore, by the time the Tenant made this second Application, the Tenant was making it outside of the 15 day time limit.

Section 66 of the Act allows an Arbitrator to extend the time limit imposed by the Act only in exceptional circumstances. In determining if there were exceptional circumstances in this case, I find the Tenant failed to diligently pursue his first Application.

The second page on the Notice clearly explains to a tenant that they must file their Application to dispute the Notice within the 15 day time period. Therefore, this informed the Tenant that the Application was of a time sensitive nature. However, I find that the Tenant acknowledged receiving a phone call from the Residential Tenancy Branch and had an obligation to call back to find out the status of his Application. However, rather than the Tenant returning the call of the Residential Tenancy Branch, he waited 20 days to contact the Information Line. Therefore, I find the Tenant failed to diligently pursue his first Application. As a result, I find the Tenant provided insufficient evidence that exceptional circumstances existed that prevented him from making his Application within the time limits imposed by the Act and when the Tenant did make this second Application it was made outside of these time limits.

Section 49(9) of the Act states that if a tenant fails to make an Application pursuant to the time limits set by Section 49(8) of the Act, then they are conclusively presumed to have accepted the Notice and must vacate the rental unit by the date on the Notice.

I have examined the Notice and I find the contents and the form used by the Landlord comply with Section 52 of the Act. As the effective vacancy date on the Notice has now passed, the Landlord would be entitled to an Order of Possession effective for the end of October 2015 as the Tenant has paid rent up until that time period.

Section 55(1) of the Act states that if a tenant makes an Application to dispute a Notice and the Application is dismissed, the Arbitrator must grant an Order of Possession if the landlord makes an oral request during the hearing.

As the Landlord made an oral request, I grant the Landlord an Order of Possession pursuant to Section 55(1) of the Act effective at 1:00 p.m. on October 31, 2015. This order must be served onto the Tenant and if the Tenant fails to vacate the rental suite in accordance with the order, the order may be enforced in the Supreme Court as an order of that court. Copies of the order are attached to the Landlords' copy of this Decision.

As the tenancy is shortly ending, the Tenant's Application to change locks on the rental unit is hereby dismissed. In relation to the Tenant's monetary claim, I determined during the hearing that this mainly comprised of costs associated with preparation, missing time and missed wages for preparing for this hearing. The Tenant was informed during the hearing that costs associated with preparation for dispute resolution cannot be awarded under the Act and must be borne by each party. The Tenant did make a claim for stress and loss of sleep but did not put the Landlord on notice of the amount he was claiming for this portion of his claim. However, the Tenant withdrew his monetary claim against the Landlord during the hearing. However, he is at liberty to re-apply for a monetary claim that can be heard under the Act.

As the Tenant failed to cancel the Notice, I also dismiss the Tenant's Application to recover the filing fees he claimed for the Applications he made.

### Conclusion

The Tenant applied to dispute the Notice outside of the time limits set by the Act. Therefore, the Tenant's Application is dismissed. The Tenant withdrew his monetary claim. The Landlord is granted an Order of Possession effective October 31 at 1:00 p.m. in response to an oral request made during the hearing.

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: October 20, 2015

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Residential Tenancy Branch

