



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding VANCOUVER EVICTION SERVICES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: OPR, FF (Landlords' Application)  
MT, CNR (Tenant's Application)

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Tenant on January 26, 2016 and by the Landlords on February 4, 2016.

The Landlords applied for an Order of Possession and to recover the filing fee from the Tenant. The Tenant applied to cancel a notice to end tenancy for unpaid rent and to recover the filing fee from the Landlord.

At the onset of the hearing, it was clear to me that the Tenant was not disputing a notice to end tenancy for unpaid rent but that he was disputing a 1 Month Notice to End Tenancy for Cause (the "Notice"). In this respect, I amended the Tenant's Application to correct this mistake pursuant to my authority under Section 64(3) (c) of the *Residential Tenancy Act* (the "Act").

The Tenant and an agent for the Landlords (the "Landlord") appeared for the hearing and provided affirmed testimony. The Landlord also had with her another party who was simply present for the hearing for training purposes; the Tenant took no issue for this person to remain and observe in the hearing.

Both parties confirmed receipt of each other's Application and documentary evidence provided prior to the hearing. The hearing process was explained to the parties and they had no questions about the proceedings.

### Issue(s) to be Decided

- Did the Tenant apply within the time limits set by the Act to dispute the Notice?
- Did the Tenant provide evidence of exceptional circumstances that would have allowed an extension of time to dispute the Notice?

### Evidence and Analysis

Both parties agreed that this tenancy started on March 1, 2013 on a month to month basis. Rent is payable in the amount of \$1,750.00 on the first day of each month. The Landlord testified that the Tenant was served with the Notice on January 12, 2016 by posting it to the Tenant's door. This was done in the presence of a witness who signed a proof of service document to verify this method of service. The Notice had a vacancy date of January 22, 2016 and was served to the Tenant for the reason that the Tenant had repeatedly paid rent late.

The Tenant confirmed receipt of the Notice but testified that it was not received by him until January 22, 2016. The Tenant acknowledged that Section 90(c) of the Act states that a document posted to the door is deemed to have been received three days later and therefore the deadline for disputing the Notice was January 25, 2016.

The Tenant was asked why he had applied one day outside of the ten day time limit imposed by Section 47(4) of the Act and why he did not make the Application immediately after receiving it on January 22, 2016 as he claimed. The Tenant testified that he had a number of mental health issues and had to seek help for this which is the reason why there was a delay. However, the Tenant provided insufficient medical evidence to support or corroborate the submission that the mental health issue specifically prevented him from making the Application by January 25, 2016.

I explained the provisions of Section 47(5) of the Act which provides that if a Tenant fails to dispute the Notice within the time limits imposed by the Act, then they have conclusively presumed to have accepted the tenancy ends in accordance with the vacancy date on the Notice. I also determined the Tenant did not disclose exceptional circumstances which prevented him from making the Application within the ten day time limit. Therefore I was unable to extend the time limit pursuant to Section 66 of the Act.

However, pursuant to Section 63 of the Act, I allowed the parties to have a discussion on whether they would like to continue the tenancy or have it end by mutual agreement. The parties engaged into a discussion and voluntarily agreed that the tenancy should end by mutual agreement.

The parties agreed to end the tenancy on April 30, 2016. This will give sufficient time for the Tenant to find alternative accommodation. The Tenant is still responsible for paying rent for the period of time he occupies the rental unit, namely for April 2016. The Landlord is issued with an Order of Possession effective April 30, 2016 at 1:00 pm. This order must be served onto the Tenant and may then be enforced in the Supreme Court

as an order of that court if the Tenant fails to vacate the rental unit. The parties confirmed their agreement to resolution in this manner both during and at the end of the hearing.

### Conclusion

The Landlords are granted an Order of Possession for an agreed date of April 30, 2016. As the Landlords would have been successful in getting an Order of Possession, I also grant them their Application filing fee which they may recover from the Tenant's security deposit pursuant to Section 72(2) (b) of the Act. The Tenant's Application is dismissed without leave to re-apply. These files are now closed.

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: March 16, 2016

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Residential Tenancy Branch