



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute codes      CNC

### Introduction

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

- cancellation of a 1 Month Notice to End Tenancy For Cause, pursuant to section 47

The hearing was conducted by conference call and scheduled to begin at 1:30 p.m. At 1:28 p.m., just prior to the commencement of the hearing, the tenant called the Residential Tenancy Branch information line and advised that he wished to cancel his application as he was in the process of moving out. The tenant did not attend the hearing. The landlord attended the hearing and advised he still wished to pursue an order of possession.

Neither the *Residential Tenancy Act* nor the Rules of Procedure provide direction with respect to cancelling a hearing. In this case, the tenant chose to wait until just minutes before the start of the hearing to advise that he did not intend to proceed. Section 55 of the Act requires an arbitrator to grant an order of possession where an application to cancel a notice to end tenancy has been dismissed. The landlord appeared at the hearing prepared to proceed and did not file an application for an order of possession as such an application is not required when the tenant has applied to cancel a notice to end tenancy. Because the landlord will be prejudiced by the cancellation, I declined to permit the tenant to cancel the application and the hearing proceeded on the merits of the claim.

### Issues

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

### Background and Evidence

The tenancy began on January 1, 2016 with a monthly rent of \$1300.00 plus utilities payable on the 1<sup>st</sup> day of each month. A written tenancy agreement was not signed. The tenant paid a security deposit of \$650.00 at the start of the tenancy.

The landlord testified that on March 9, 2016 he personally served the tenant with the 1 Month Notice.

The tenant application to cancel the 1 Month Notice was filed on March 23, 2016.

### Analysis

I am satisfied that the tenant was personally served with the 1 Month Notice on March 9, 2016 pursuant to section 88 of the Act.

Pursuant to section 47(4) of the *Act*, the tenant may make a dispute application within ten days of receiving the 1 Month Notice. As the tenant was served the 1 Month Notice on May 9, 2016, the tenant's application should have been filed on or before May 19, 2016. The tenant's application was not filed until May 23, 2016. In accordance with section 47(5) of the *Act*, the tenant's failure to take this action within ten days led to the end of his tenancy on the effective date of the notice. In this case, this requires the tenant to vacate the premises by April 30, 2016.

The tenant's application is dismissed without leave to reapply and the landlord is entitled to an Order of Possession.

### Conclusion

I grant an Order of Possession to the landlord effective **April 30, 2016**. 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 27, 2016

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Residential Tenancy Branch