



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPB, FF, MT, CNC

### Introduction

This hearing dealt with cross applications. The landlord has filed an application seeking an order of possession, a monetary order and an order to recover the filing fee for this application. The tenants have also filed an application seeking more time to file an application to cancel a Notice to End Tenancy and to have a One Month Notice to End Tenancy for Cause set aside. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

### Issues to be Decided

Is either party entitled to any of the above under the Act, regulation or tenancy agreement?

### Background and Evidence

The landlord gave the following testimony. The tenancy began on or about April 19, 2016 for a short term rental that was to end on June 30, 2016. Rent in the amount of \$1350.00 is payable in advance on the first day of each month. The landlord stated that no deposit was required. The landlord stated that the tenancy agreement was very clear that the tenants were to move out as per the “move out “clause in the tenancy agreement. The landlord stated that the tenants signed the agreement and initialled each page to acknowledge this and all other obligations. The landlord stated that the tenants have refused to move and that they have refused to pay the rent for July and

August. The landlord requested an order of possession, the unpaid rent of \$2700.00 and the \$100.00 filing fee for a monetary order of \$2800.00.

The tenant gave the following testimony. The tenant stated that he thought the tenancy was a month to month and didn't know that he had to move out. The tenant stated that he hasn't paid the rent for July and August because he was waiting for the outcome of this hearing. The tenant stated that if the landlord lets him stay he will pay the rent. The tenant stated that he thought this was going to be a long term rental.

### Analysis

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

The tenant filed an application seeking an extension for more time to make an application to cancel a Notice to End Tenancy and to have a One Month Notice to End Tenancy for Cause set aside. On May 20, 2016 the landlord issued a hand drafted typed letter to remind the tenant that the tenancy was to end on June 30, 2016, simply out of consideration and to remind the tenants of their obligation as per the tenancy agreement. The tenant was silent in terms of requesting more time to file an application to cancel a notice to end tenancy. Based on the insufficient evidence before me, I dismiss the tenants request for more time to file an application to cancel a Notice to End Tenancy.

In addition, as there is no One Month Notice to End Tenancy for Cause before me and the testimony of both parties is that one was never issued; just the reminder letter, I hereby dismiss that portion of the tenants' application.

The tenant has not been successful in their application.

I accept the landlords' testimony and supporting documentary evidence. The tenancy agreement clearly outlines that the tenancy is to end on June 30, 2016 and the tenants are to vacate by that time. In addition, the landlord had the tenant initial and sign where it's required along with every page of the agreement so that there could be no misunderstanding. I do not accept that the tenants' version that he was unaware of the fixed term agreement. The tenant was informed by letter on May 20, 2016 by the landlord that the tenancy would end but chose not to file an application until June 29, 2016. The tenants testimony was not compelling that he was unaware the tenancy was to end on June 30, 2016 and that he was to vacate.

In addition, the tenant admitted that he withheld payment of rent for two months awaiting the outcome of this hearing. I find that the tenant had a complete disregard for his legal obligation and chose not to move or to pay. Based on the above I find that the landlord is entitled to an order of possession. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

In the tenants own testimony he acknowledged he withheld the rent due for July or August and was not in possession of an order from the Branch allowing him to do so or with the agreement of the landlord.

As for the monetary order, I find that the landlord has established a claim for \$2700.00 in unpaid rent. The landlord is also entitled to recovery of the \$100.00 filing fee. I grant the landlord an order under section 67 for the balance due of \$2800.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

### Conclusion

The landlord is granted an order of possession and a monetary order for \$2800.00.

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: August 11, 2016

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Residential Tenancy Branch