



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 3 B GROUP  
and [tenant name suppressed]

## **DECISION**

Dispute Codes      OPC OPB MT CNC MNR FF

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- an order of possession for cause and breach of an agreement pursuant to section 55;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Tenant:

- allow the tenant more time to make an application to cancel a Notice to End Tenancy
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for cost of emergency repairs pursuant to section 67;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. The tenant did not attend this hearing, although I waited until 9:15 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

The landlord testified that on August 15, 2016, she personally served the tenant's roommate with a copy of the Application for Dispute Resolution and Notice of Hearing. The landlord testified that the roommate is an adult and resides with the tenant. The

roommate was also listed as a secondary applicant in the tenants' application for dispute.

Based on the above evidence, I am satisfied that the tenant was served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to section 89 of the Act. The hearing proceeded in the absence of the tenant.

As the tenant did not participate in the hearing, the tenant's application is dismissed without leave to reapply.

### Issues

Is the landlord entitled to an order of possession for cause or for breach of an agreement?

Is the landlord entitled to recover its filing fee?

### Background and Evidence

The rental unit is a mobile home owned by the landlord. The tenancy began on June 3, 2016 with a monthly rent of \$1325.00 payable on the 1<sup>st</sup> day of each month. The tenant paid a security deposit of \$662.00 and a pet deposit of \$100.00 at the start of the tenancy which the landlord continues to hold.

The landlord testified that on July 6, 2016 she served the tenant with the 1 Month Notice to End Tenancy for Cause by posting a copy to the door of the rental premises. A witnessed Proof of Service form of the Notice to End Tenancy was provided on file.

The fact that the tenant made an application to dispute the Notice confirms that the Notice was received by the tenant.

### Analysis

I am satisfied that the tenant was deemed served with the 1 Month Notice to End Tenancy for Cause on July 9, 2016, three days after its posting, pursuant to sections 88 & 90 of the Act.

Pursuant to section 47 of the Act, the tenant may make a dispute application within ten days of receiving the 1 Month Notice. As the Notice was deemed served on July 9, 2016, the tenant's application should have been made on or before July 19, 2016. The tenant's application was not filed until August 5, 2016. If, as in the present case, the

tenant does not make an application for dispute with ten days, the tenant is conclusively presumed to have accepted that the tenancy ended on the “corrected” effective date of the Notice, August 31, 2016.

Therefore, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the Act.

As the tenant had already made an application to dispute the 1 Month Notice, the landlord was not required to make an application for an order of possession. Pursuant to section 55 of the Act, if a tenant’s application to dispute a landlord’s notice is dismissed, the landlord is granted an order of possession. Accordingly, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant 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: September 29, 2016

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Residential Tenancy Branch