



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

CNC FF

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, received at the Residential Tenancy Branch on October 11, 2016 (the "Application"). The Tenant applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a 1 Month Notice to End Tenancy for Cause, incorrectly dated November 5, 2016 (the "1 Month Notice"); and
- an order granting recovery of the filing fee.

The Tenant attended the hearing on his own behalf and was assisted by J.Y., who provided translation services. The Landlord was represented at the hearing by N.B. Both parties giving evidence provided a solemn affirmation.

The Landlord acknowledged receipt of the Notice of a Dispute Resolution Proceeding. The Tenant advised documentary evidence had been submitted although a copy was not located in the Residential Tenancy Branch paper file or computerized file management system. In addition, the Landlord stated he did not receive any documentary evidence from the Tenant. In any event, the Tenant was prepared to proceed.

On behalf of the Landlord, N.B. testified that the Landlord's documentary evidence was served on the Tenant by posting a copy to the door of the Tenant's rental unit, with a witness present. The Tenant acknowledged receipt. No further issues were raised with respect to service or receipt of the parties' documentary evidence.

The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer to only the relevant facts and issues in this Decision.

Issues to be Decided

1. Is the Tenant entitled to an order cancelling the 1 Month Notice?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

The Landlord provided with his evidence a copy of the tenancy agreement between the parties, and other documentation in support of rent increases. It confirms that a fixed-term tenancy was in place from October 1, 2016 to September 30, 2011; thereafter the tenancy continued on a month-to-month basis. According to the Landlord, rent in the amount of \$1,020.00 per month is due on the first day of each month. The Tenant submitted rent is \$1,040.00 per month, although nothing turns on this difference. The parties agreed the Tenant paid a security deposit of \$470.00 at the beginning of the tenancy.

On behalf of the Landlord, N.B. provided testimony in support of the 1 Month Notice. He stated that on or about March 4, 2016, flood damage occurred in a unit below the Tenant's rental unit. It was subsequently discovered that the flooding originated in the Tenant's rental unit. When N.B. entered the Tenant's rental unit to deal with the source of the flooding, he observed extensive damage to the Tenant's rental unit and informed the property manager.

N.B. provided testimony with respect to the damage he and the property manager observed. First, there was damage to the tiles around the bathtub. A photograph shows the damage. The tiles were removed and a hole appeared in the wall. Repairs were subsequently completed by the Landlord.

Second, N.B. testified that a kitchen cabinet had been torn off and placed in the hallway. In support, the Landlord submitted a photograph showing the exposed cupboard and the damaged door.

Third, the Landlord described two large holes in the bathroom wall. In support, the Landlord submitted photographs of the holes and the repairs subsequently completed by the Landlord.

Finally, N.B. testified the Tenant removed the upper tracks of a closet door. These were subsequently replaced by the Landlord.

Accordingly, the Landlord issued the 1 Month Notice on the basis that the Tenant caused extraordinary damage to the rental unit; has not done required repairs of damage to the rental unit; or has breached a material term of the tenancy agreement. A Proof of Service form confirms the 1 Month Notice was served on the Tenant by posting a copy to the door of the rental unit on October 5, 2016. The Landlord stated the 1 Month Notice was inadvertently dated November 5, 2016 and that this was a typographical error. The Tenant did not dispute receipt of the 1 Month Notice.

The Tenant acknowledged causing damage to the shower and closet doors. However, he also referred to several “mistakes” the Landlord has made. First, the Tenant indicated that it took the Landlord a long time to complete repairs the Tenant made known. He indicated that a “repair report” was submitted to the Landlord in or about May 2016, but that he did not receive a response. N.B. denied receiving any written correspondence from the Tenant.

Second, the Tenant referred to water pooling on the balcony and that this has not been addressed by the Landlord. Again, the Tenant stated he submitted a second “repair report” to the Landlord in or about June 2016, but that there was no response. N.B. stated most tenants simply sweep excess moisture off the balconies, and that no correspondence regarding the balcony was received from the Tenant.

Third, the Tenant stated an electrical circuit in the bathroom is not installed correctly, which has resulted in mold on the ceiling.

Finally, Tenant submitted the Landlord does not have good management in place. He testified that the property manager is difficult to contact and is not responsive.

### Analysis

In light of the oral and documentary evidence submitted by the parties, and on a balance of probabilities, I find:

Section 47 of the *Act* permits a landlord to end a tenancy for cause if the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property.

In this case, the Landlord served the 1 Month Notice on the Tenant by attaching a copy to the door of the Tenant’s rental unit on October 5, 2016. Pursuant to section 90 of the *Act*, documents served in this manner are deemed to have been received three days later.

Accordingly, I find that the 1 Month Notice is deemed to have been received by the Tenant on October 8, 2016.

The Landlord provided oral testimony and photographic evidence of damage to tiling and walls in the bathroom, kitchen cupboards, and hallway closets. The Tenant acknowledged the damage and raised other issues in response. I am satisfied that the damage in the Tenant’s rental unit, which the Tenant acknowledged, constitutes extraordinary damage. Accordingly, the Tenant’s Application to cancel the 1 Month Notice is dismissed.

When a tenant’s application to cancel a notice to end tenancy is dismissed, section 55 of the *Act* requires that I issue an order of possession in favour of the Landlord if the notice complies with section 52 of the *Act*. Having reviewed the 1 Month Notice, I find it complies with section 52 of the *Act*.

When a notice to end a tenancy provides an effective date that does not comply with the *Act*, section 52 of the *Act* operates to automatically correct the effective date. In this case, the 1 Month Notice was issued on October 5 and is deemed to have been received on October 8, 2016. The earliest effective date that complies with the *Act* is November 30, 2016. Accordingly, I grant the Landlord an order of possession, which will be effective on November 30, 2016, at 1:00 p.m.

As the Tenant has not been successful, I decline to grant an award for recovery of the filing fee.

### Conclusion

The Tenant's Application is dismissed.

By operation of section 55 of the *Act*, the Landlord is granted an order of possession, which will be effective November 30, 2016, at 1:00 p.m. The order of possession may be filed in 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: October 31, 2016

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Residential Tenancy Branch