



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

Landlord: OPB MND MNR MNSD MNDC FF  
Tenant: LAT LRE MNDC O OLC PSF RP CNC

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Landlord's Application for Dispute Resolution was received at the Residential Tenancy Branch on September 7, 2016 (the “Landlord's Application”). The Landlord applied for the following relief pursuant to the *Act*:

- an order of possession based on the Tenant's breach of an agreement with the Landlord;
- an monetary order for damage to the unit, site or property;
- a monetary order for unpaid rent;
- an order permitting the Landlord to keep all or part of the security deposit or pet damage deposit; and
- an order granting recovery of the filing fee.

The Tenant's Application for Dispute Resolution was received at the Residential Tenancy Branch on September 6, 2016, but was subsequently amended on September 28, 2016 and October 12, 2016 (the “Tenant's Application”). The Tenant applied for the following relief pursuant to the *Act*:

- an order authorizing the Tenant to change the locks on the rental unit;
- an order suspending or setting conditions on the Landlord's right to enter the rental unit;
- a monetary order for compensation for loss or other money owed;
- other unspecified relief;
- an order that the Landlord comply with the *Act*, regulation or a tenancy agreement;

- an order that the Landlord provide services or facilities required by the tenancy agreement or law;
- an order requiring the Landlord to make repairs to the unit, site or property;
- an order allowing the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided; and
- an order cancelling a 1 Month Notice to End Tenancy for Cause, dated September 3, 2016 (the “1 Month Notice”).

The Landlord represented himself at the hearing, as did the Tenant. Both provided a solemn affirmation at the beginning of the hearing.

The Landlord testified that a package containing the Landlord’s Application, Notice of a Dispute Resolution Proceeding, and a copy of the tenancy agreement between the parties, was served on the Tenant by posting a copy on the door of the Tenant’s rental unit on September 6, 2016, as permitted by section 89(2) of the *Act*.

The Tenant testified that these documents were not received and that he was unaware of the Landlord’s Application. In support, he submitted page 1 of 4 pages of an email exchange with the Residential Tenancy Branch, which was received at the Residential Tenancy Branch on October 24, 2016, contrary to Rule of Procedure 3.14. However, in the interest of fairness, I have addressed the Tenant’s submissions below.

The email exchange was tendered as proof the Tenant did not receive notice of the Landlord’s Application. However, the email exchange indicates that on September 22, 2016, the Tenant expressed concern that he had missed the deadline to dispute the 1 Month Notice, and that this action (or lack thereof) was on the advice of an information officer at the Residential Tenancy Branch. The email exchange does not state the Tenant did not receive the Landlord’s Application documents. The email from the Residential Tenancy Branch in response recommended that the Tenant file an amendment because the Landlord’s Application was for an order of possession, and as such was related to the Tenant’s Application to dispute the 1 Month Notice, and would therefore be heard at the same time.

Having considered the Tenant’s submissions, I am not satisfied, on a balance of probabilities, that the Tenant did not receive the Landlord’s Application materials. The email exchange submitted by the Tenant merely addresses the Tenant’s concern about failing to dispute the 1 Month Notice on time, and the scheduling of both applications to be heard at the same time. In addition, I find it unlikely that an information officer at the

Residential Tenancy Branch would advise a potential applicant not to dispute a 1 Month Notice.

Pursuant to sections 89 and 90 of the *Act*, I find the Tenant is deemed to have been served with the Landlord's Application on September 9, 2016. The Tenant attended at the hearing and was a party to the signed tenancy agreement submitted by the Landlord. Accordingly, I find there is no prejudice to the Tenant in proceeding with the hearing and considering the written tenancy agreement submitted with the Landlord's Application.

Further, I note that the Tenant did not dispute that he received the 1 Month Notice. The Tenant's amendment received at the Residential Tenancy Branch on September 28, 2016, confirms the 1 Month Notice was received by the Tenant on September 4, 2016.

The Tenant also objected to the documentary evidence submitted by the Landlord, which was received at the Residential Tenancy Branch in two packages on October 20 and 26, 2016. I find the two evidence packages submitted by the Landlord were provided contrary to Rule of Procedure 3.14. Accordingly, they have not been considered in reaching a Decision.

The Tenant testified he served the Tenant's Application and the evidence upon which he intended to rely on the Landlord in person. The Landlord acknowledged receipt of some documents from the Tenant. However, the Tenant's documentary evidence has not been considered in reaching a Decision.

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

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Preliminary and Procedural Matters

The parties were advised that Rule 2.3 of the Residential Tenancy Branch Rules of Procedure permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. In these circumstances, I find it appropriate to exercise my discretion to sever the all but the Landlord's claim to end the tenancy on the basis of the Tenant's breach of the tenancy agreement and the Tenant's claim to cancel the 1 Month

Notice. The parties are granted leave to reapply for the remainder of the relief sought at a later date, as appropriate.

### Issues to be Decided

1. Is the Landlord entitled to an order of possession based the Tenant's breach of the tenancy agreement between the parties?
2. Is the Tenant entitled to an order cancelling the 1 Month Notice?

### Background and Evidence

As indicated above, a copy of the tenancy agreement was submitted with the Landlord's Application materials. It confirms a one month fixed term tenancy from August 2 to September 2, 2016. Rent of \$750.00 was payable for this period. The parties provided their signatures to confirm the tenancy would end and the Tenant would move out of the rental unit at the end of the fixed term. The Tenant paid a security deposit of \$375.00 and a pet damage deposit of \$375.00.

Attached to the tenancy agreement was an addendum, signed by the parties and dated August 2, 2016. It stated:

1. *This tenancy agreement is for the period 2 August 2016 to 2 September 2016, ending at 12.00 on that date.*
2. *The Landlord, [G.M.], will not entertain any time extensions for the extension of the tenancy agreement.*

The Landlord provided oral testimony in support of the tenancy agreement. He stated he was wary of the number of cats the Tenant owned, but provided the fixed term tenancy to help the Tenant find another more suitable rental unit.

The Landlord also testified the Tenant did make the rent payment, and paid the deposits described above, but has not since made any further payments to the Landlord.

In reply, the Tenant agreed he signed the written tenancy agreement submitted by the Landlord. However, he submitted that he signed it under duress. The Tenant did not want to be left without a home for him and his cats. The Tenant also alleged there was a prior verbal agreement that provided for a two-month fixed-term that would continue on a month-to-month basis thereafter.

The Tenant testified that he has paid rent for September and October and was able to provide receipts in support, although receipts were not submitted into evidence.

### Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find:

Section 55(2)(c) of the *Act* permits a landlord to request an order of possession of a rental unit if “the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit at the end of the fixed term”.

In this case, the Landlord has submitted a copy of the written tenancy agreement between the parties that sets out the duration of the tenancy and provides that the Tenant will vacate the rental unit at the end of the fixed term. The Tenant acknowledged he signed the tenancy agreement. I find there is insufficient evidence for me to conclude the Tenant signed the tenancy agreement under duress as alleged by the Tenant, but that the written tenancy agreement submitted by the Landlord accurately reflects the agreement between the parties. However, the Tenant did not vacate the rental unit at the end of the fixed term and continues to reside in the rental unit.

In light of the above, and pursuant to section 55(2)(c) of the *Act*, I grant the Landlord an order of possession, which will be effective one (1) day after service on the Tenant.

As the Landlord has been successful, I award \$100.00 as recovery of the filing fee paid to make the Landlord's Application, which I order may be deducted from the security deposit.

As the tenancy has ended pursuant to the written tenancy agreement between the parties, and the Landlord has demonstrated an entitlement to an order of possession pursuant to section 55(2)(c) of the *Act*, I find it is not necessary for me to consider the Tenant's Application to cancel the 1 Month Notice further. As a result, the Tenant's Application to cancel the 1 Month Notice is dismissed, without leave to reapply.

Conclusion

The Landlord's Application is successful and the Tenant's Application is dismissed.

The Landlord is granted an order of possession, which will be effective one (1) day after service on the Tenant. 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 28, 2016

---

Residential Tenancy Branch