



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SOLTERRA HARO STREET  
**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. All named parties attended the hearing.

## Preliminary Issue: Service of Tenant's Application

The tenant's application was filed on November 29, 2016 within the time period permitted under the Act.

The tenant testified that he served the landlord with the application for dispute resolution package by sending it by registered mail sometime in December 2016. The tenant was not able to provide a registered mail tracking number in support of service.

The landlord testified that he did not receive the application by registered mail and he only received a copy delivered in person by the tenant on January 3, 2017. The landlord argues that he has not had sufficient opportunity to respond to the tenant's application as it was only received 6 days prior to the hearing.

The tenant submits that the documents he served to the landlord in person on January 3, 2017 were pertaining to a successful review hearing application filed by the tenant on an application to cancel a 10 Day Notice to End Tenancy. That review hearing is scheduled on a future date.

The landlord acknowledged receiving the review consideration decision but maintains he has not been served with the review hearing Notice but instead was served with the Notice for today's hearing and this was the only Notice he received.

Section 89 of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution:

*89(1) An application for dispute resolution,...when required to be given to one party by another, must be given in one of the following ways:*

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;*
- (e) as ordered by the director under section 71(1) [director's orders: delivery and service of document]...*

I find the tenant was not able to provide sufficient evidence to establish that the landlord was served with the application for dispute resolution and Notice of Hearing by registered mail sometime in December 2016. The only evidence of the landlord being served with the application was on January 3, 2017 by personal service.

Rule 3.1 of the Residential Tenancy Branch (the Branch) Rules of Procedure requires that an applicant must, within 3 days of it being made available, serve the respondent with a copy of the hearing package. The hearing package was made available for service on the landlord on November 29, 2016. The tenant failed to provide sufficient evidence to support this hearing package was served prior to January 3, 2017. As this was only six days prior to the hearing date, I find the landlord did not have a sufficient opportunity to respond to the application. I also find that any further delay caused as a result of an adjournment to the hearing would be prejudicial to the landlord.

### Issues

Is the landlord entitled to an order of possession?

### Analysis

Section 47 of the *Act* contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Under this section, a tenant may dispute a 1

Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. If the tenant does not make an application for dispute within ten days, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

In this case the tenant filed an application to dispute the Notice within the required timeline but failed to follow through on the application by serving the landlord within a reasonable time that would allow the landlord to respond to the application. I dismiss the tenant's application to cancel the Notice without leave to reapply and find the tenant is conclusively presumed to have accepted the tenancy ended.

I find that the Notice served by the landlord is in compliance with the form and content requirements of section 52 of the Act; therefore, the landlord is entitled to an Order of Possession pursuant to section 55 of the Act.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. 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: January 09, 2017

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Residential Tenancy Branch