



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPC

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for an Order of Possession for cause pursuant to section 55.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord gave undisputed sworn testimony, supported by written evidence, that he sent the tenant a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) by registered mail on December 1, 2016. In addition to receiving the 1 Month Notice by registered mail, the tenant confirmed that he also received a copy of this Notice through his mail slot at the rental property. I am satisfied that the tenant was duly served with the 1 Month Notice in accordance with section 88 of the *Act*.

The landlord testified that he sent the tenant a copy of his dispute resolution hearing package and written evidence by registered mail on December 16, 2016. The tenant confirmed that he received a copy of the landlord's dispute resolution hearing package, including the landlord's application for dispute resolution and the landlord's written evidence by registered mail. I find that the landlord served these documents to the tenant in accordance with sections 88 and 89 of the *Act*.

At the hearing, I clarified that the landlord's 1 Month Notice served on December 1, 2016 identified an incorrect effective date to end this tenancy. Rather than the effective date of December 31, 2016 indicated on the landlord's 1 Month Notice, section 47(2) of the *Act* establishes that the earliest a 1 Month Notice issued on December 1, 2016 could take effect would be January 31, 2017. I advised the parties that the *Act* allows for an automatic correction of the effective date of this 1 Month Notice to January 31, 2017.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for cause?

Background and Evidence

The tenant gave undisputed sworn testimony that this tenancy began about five years ago in 2012. Although the tenant was uncertain as to whether there was a written tenancy agreement, he testified that his monthly rent was initially \$800.00, which has subsequently increased to \$850.00. The landlord confirmed that he still holds the tenant's \$400.00 security deposit.

The incident that led to the landlord's issuance of the 1 Month Notice occurred on December 1, 2016, when the landlord attempted to have the pest control company retained by the landlord enter the rental unit and treat the tenant's rental unit for bedbugs. The landlord said that a number of other residents in this 49-unit apartment building had complained of bedbugs and someone had viewed bedbugs on the tenant's clothing.

At the hearing, the tenant did not deny having refused to allow a worker from the pest control company hired by the landlord to access his rental unit on December 1, 2016. The tenant maintained that he received no written notice from the landlord that a pest control technician would be attending that day. He said that he has no desire to have bedbugs in his rental unit and gave undisputed testimony that he has allowed pest control workers to treat his rental unit in the past when requested. He said that these treatments are only successful for a relatively short period of time and that the bedbugs keep returning to this wood-framed building. The tenant said that bedbugs are an ongoing problem in this building. Based on the tenant's sworn testimony at the hearing, it would seem that his principal reason for denying access to his rental unit on December 1, 2016 was because the tenant did not believe that the pest control worker was sufficiently capable of ridding his rental unit of bedbugs.

By contrast, the landlord testified that he had provided the tenant with the required 24 hours of written notice that this work would be happening. The landlord gave sworn testimony that the tenant had been so upsetting to the pest control company's employee that the pest control company refused to enter the tenant's rental unit while the tenant resided there. He said that the tenant had seriously jeopardized his lawful right to have pest control technicians treat the rental property for bedbugs.

At the hearing, the tenant said that he remained willing to let the landlord's pest control company attend his rental unit and undertake bedbug treatment. The landlord advised that he wished to proceed with his application for an Order of Possession based on the 1 Month Notice issued to the tenant.

Analysis

The landlord entered into written evidence a copy of his December 1, 2016 1 Month Notice. In that Notice, requiring the tenant to end this tenancy by December 31, 2016, the landlord cited the following reason for the issuance of the Notice:

*Tenant or a person permitted on the property by the tenant has:*

- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;...*

Paragraph 47(1)(d)(ii) of the *Act* allows a landlord to end a tenancy for cause for the above-noted reason.

The tenant acknowledged that he was served with the 1 Month Notice. The tenant did not apply to dispute the Notice pursuant to section 47(4) of the *Act*. The tenant offered little explanation as to why he failed to apply to cancel the 1 Month Notice when the Notice clearly stated that he had to do so in order to avoid ending the tenancy. Rather, he attached considerable significance at the hearing to the fact that the landlord had received his regular rental payment for January 2017, and had not tried to evict him on December 31, 2016, the stated date when the 1 Month Notice was to take effect.

In this case, the December 31, 2016 effective date on the Notice automatically corrected to January 31, 2017, the earliest date it could take effect. The tenant's rent for January 2017 was due on January 1, 2017, to cover the final month of this tenancy as per the corrected effective date of the landlord's 1 Month Notice. Under these circumstances, I find that the landlord's acceptance of a rent cheque for January 2017 did not in any way reinstate this tenancy or negate the effect of the 1 Month Notice, which could only have legally ended this tenancy as of January 31, 2017.

As outlined on page 2 of the 1 Month Notice and pursuant to section 47(5) of the *Act*, a tenant who fails to file an application to cancel the 1 Month Notice within ten days of receiving that Notice is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

Section 47(3) of the *Act* requires that a 1 Month Notice must comply with section 52 of the *Act*. In this case, I am satisfied that the form and content of the landlord's 1 Month Notice complies with section 52 of the *Act* and was served in accordance with section 88 of the *Act*.

Paragraph 47(5)(b) of the *Act* requires a tenant who has failed to apply to cancel a 1 Month Notice to vacate the rental unit by the date cited in that Notice. I issue an Order of Possession to the landlord to be used in the event that the tenant has not vacated the rental unit in accordance with the corrected effective date stated on the 1 Month Notice, January 31, 2017.

Conclusion

The landlord is provided with a formal copy of an Order of Possession effective at 1:00 p.m. on January 31, 2017. 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 06, 2017

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Residential Tenancy Branch