



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LAURELWOOD VENTURES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPM, CNC

### Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for [pursuant to section 55;

The tenant applied for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

The landlord's agent (the landlord) attended the hearing via conference call and provided affirmed testimony. The tenant attended the hearing via conference call and provided affirmed testimony. Both parties confirmed receipt of the notice of hearing package served upon the other party via Canada Post Registered Mail. As such, I am satisfied that both parties have been sufficiently served as per section 90 of the *Act*.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession as a result of a mutual agreement to end the tenancy?

Is the tenant entitled to an order cancelling the 1 Month Notice?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on December 1, 2013 on affixed term tenancy ending on December 1, 2014 as shown by the submitted copy of the signed tenancy agreement dated December 2, 2013. The monthly rent is \$450.00 and a security deposit of \$225.00 was paid.

Both parties confirmed that a 1 Month Notice dated February 26, 2017 was served upon the tenant. The 1 Month Notice sets out an effective end of tenancy date of March 30, 2017 and 2 reasons as:

- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
- Tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the landlord.

During the hearing the landlord clarified that as a mutual agreement was reached with the tenant, the landlord is cancelling the 1 Month Notice dated February 26, 2017.

The landlord provided undisputed affirmed testimony that a mutual agreement to end the tenancy was entered into with the tenant on February 27, 2017 to end the tenancy on March 31, 2017.

The tenant disputed this agreement stating that although the agreement was signed by him, it was not explained to him nor did he understand what it was for. The tenant stated with the assistance of his case worker that he has mental issues and that he was not capable of making the choice.

The landlord disputes the tenant's claim stating that the document was explained to the tenant and the tenant had confirmed that he understood.

### Analysis

In an application for an order of possession on the basis of a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

In this case landlord has provided affirmed testimony during the hearing that as the tenant had entered into a mutual agreement to end the tenancy the landlord was cancelling the 1 Month Notice dated February 26, 2017. As such, I find that the tenant has been successful in his application.

I accept the evidence of both parties and find that the tenant did enter into a mutual agreement to end the tenancy on March 31, 2017. On the issue of the tenant's capacity to understand and make an informed choice to sign and agree to end the tenancy, I find that the tenant does have capacity. The tenant and his case worker both confirmed during the hearing that the tenant is not legally incapable of making a decision and signing the agreement. During the hearing the tenant had repeatedly stated that the reason he is disputing the agreement was because he did not want to move. I find that the tenant demonstrated during the conference call hearing the capacity to understand the situation and that he comprehends the consequences of his actions.

As such, the landlord is granted an order of possession as a result of the mutual agreement to end the tenancy. As the effective end of tenancy date has not passed, I grant an order of possession to be effective 2 days after it is served upon the tenant.

#### Conclusion

The tenant's application to cancel the 1 Month Notice is successful.  
The landlord is granted an order of possession.

This order must be served upon the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that court.

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: April 06, 2017

---

Residential Tenancy Branch