



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC

### Introduction

On April 7, 2017, the Tenant submitted an Application for Dispute Resolution asking that a 1 Month Notice to End Tenancy for Cause (“the Notice”) be cancelled.

The matter was set for a conference call hearing. Both parties appeared at the hearing. The Tenant was represented by his brother Mr. P.C. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and 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 Tenant’s brother Mr. P.C. testified that he does not have any legal authority to act on behalf of his brother who is the Tenant in this hearing. He testified that his brother suffered a stroke and has difficulty understanding what is taking place. There was no documentary medical information provided regarding the tenants medical condition.

I asked the Tenant if he is giving authority to his brother to act on his behalf and the Tenant did not appear to understand and did not give the authority. The Tenant did not participate any further in the hearing.

The Tenant’s brother testified that on February 23, 2017, he disputed a 1 Month Notice To End Tenancy For Cause dated February 17, 2017, by applying for Dispute Resolution. He testified that he cancelled the dispute of the 1 Month Notice on March 22, 2017. He testified that he cancelled the dispute of the 1 Month Notice because he

entered into a mutual agreement with the Landlord to end the tenancy effective May 31, 2017.

The Tenant's brother submitted that he had no authority to dispute the notice or enter into a mutual agreement to end the tenancy on behalf of his brother.

I find that the 1 Month Notice To End Tenancy For Cause dated February 17, 2017, was never previously disputed. The Tenant's brother applied on February 23, 2017, but never had authority to dispute the Notice, and subsequently cancelled the dispute hearing.

On April 7, 2017, the Tenant's brother has again applied to dispute the 1 Month Notice To End Tenancy For Cause dated February 17, 2017, and he submits that he does not have authority to act on behalf of his brother. The Application does not include a request for more time to dispute the 1 Month Notice.

Based on the evidence and testimony before me, I find that the 1 Month Notice To End Tenancy For Cause dated February 17, 2017, has not been disputed by the Tenant within 10 Days of receiving it. The 1 Month Notice has an effective date of March 31, 2017.

Even if the Tenant's brother had the authority to dispute the Notice, the application is late and the time limit to allow a dispute of the Notice cannot be extended.

Section 66 of the Act states:

*The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59 (3) [starting proceedings] or 81 (4) [decision on application for review].*

*(2) Despite subsection (1), the director may extend the time limit established by section 46 (4) (a) [landlord's notice: non-payment of rent] for a tenant to pay overdue rent only in one of the following circumstances:*

*(a) the extension is agreed to by the landlord;*

*(b) the tenant has deducted the unpaid amount because the tenant believed that the deduction was allowed for emergency repairs or under an order of the director.*

***(3) The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice. [my emphasis].***

I find that the Application made on April 7, 2017, to dispute the 1 Month Notice To End Tenancy For Cause dated February 17, 2017, was made beyond the effective date of the 1 Month Notice. The Application is dismissed.

### Issues to be Decided

- Is the Landlord entitled to an order of possession?

### Background and Evidence

The Landlord testified that a 1 Month Notice To End Tenancy For Cause dated February 17, 2017, was served to the Tenant by posting it to the Tenants door on February 17, 2017.

The reason for ending the tenancy within the 1 Month Notice is:

*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*

The Tenant's brother confirmed that the 1 Month Notice was received.

The Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 10 days after receiving it by filing an Application for Dispute Resolution at the Residential Tenancy Branch. If a Tenant does not file an Application within 10 days, the Tenant is presumed to accept the Notice and must move out of the rental unit or vacate the site by the date set out on page 1 of the Notice.

If the Tenant does not file an Application, move or vacate, the Landlord can apply for an Order of Possession that is enforceable through the court.

### Analysis

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

I dismiss the Tenant's Application to cancel the 1 Month Notice dated February 17, 2017. I find that the Application made on April 7, 2017, was made without authority of the Tenant and is beyond the effective date of the 1 Month Notice.

Pursuant to section 47(5) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

Under section 55 of the Act, when a Tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

The Landlords requested that the order of possession be effective on July 31, 2017.

I grant the Landlord an order of possession effective July 31, 2017, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

### Conclusion

The Tenant's Application is dismissed. I grant the Landlord an order of possession effective July 31, 2017. The Tenant must be served with the order of possession.

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: May 17, 2017

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Residential Tenancy Branch