



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPREIT LIMITED PARTNERSHIP  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: CNC

### Introduction

The tenant applied under the *Residential Tenancy Act* (the “Act”) to cancel a 1 Month Notice to End Tenancy for Cause dated March 16, 2017 (the “1 Month Notice”).

On May 3, 2017 the hearing commenced and was adjourned to allow the tenant to arrange to have an advocate present at the hearing. An Interim Decision decided was issued from a different arbitrator dated May 5, 2017 which should be read in conjunction with this decision.

On June 16, 2017, the hearing reconvened. The tenant, an advocate for the tenant (the “advocate”) and an agent for the landlord (the “agent”) attended the teleconference hearing. The parties were informed that the undersigned arbitrator was continuing the hearing as the previous arbitrator had left the Residential Tenancy Branch for another opportunity. I introduced myself to the parties and an opportunity was provided to both parties to ask questions.

Neither party raised any concerns regarding the service of documentary evidence.

### Preliminary and Procedural Matter

Based on the 1 Month Notice and the evidence before me, I find the tenant incorrectly named the landlord agent as the respondent when in fact the correct respondent is the corporate landlord company name. As a result, I have amended the tenant’s application pursuant to section 64(3) of the *Act* and have replaced the landlord agent’s name with the name of the corporate landlord company listed on the tenancy agreement and the 1 Month Notice.

### Issue to be Decided

- Should the 1 Month Notice be cancelled?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on August 1, 2013 and reverted to a month to month tenancy after July 31, 2014.

The tenant confirmed receiving the 1 Month Notice dated March 16, 2017 on March 16, 2017. The tenant did not dispute the 1 Month Notice until March 29, 2017. The 1 Month Notice is signed and dated by the landlord agent and has an effective vacancy date listed as April 30, 2017. The tenant continues to occupy the rental unit.

The agent testified that the tenant has paid money for use and occupancy only for the month of June 2017.

### Analysis

Based on the documentary evidence and testimony provided during the hearing, and on the balance of probabilities, I find the following.

Section 47(4) of the *Act* states that a tenant may dispute a 1 Month Notice within 10 days after the date the tenant receives the 1 Month Notice. In the matter before me, the tenant testified that he received the 1 Month Notice on Thursday, March 16, 2017 but did not dispute the 1 Month Notice until March 29, 2017. I find the deadline under section 47 of the *Act* to dispute the 1 Month Notice would have been March 27, 2017 as the 10<sup>th</sup> day would have fallen on Sunday March 26, 2017 and based on section 25 of the *Interpretation Act* the tenant is given until the next business day which would have been Monday, March 27, 2017. The tenant did not apply until Wednesday, March 29, 2017 and did not apply for an extension of time to dispute the 1 Month Notice.

As a result, and in accordance with section 47(5) of the *Act*, I find that the tenant is conclusively presumed to have accepted that the tenancy ended on the effective vacancy date which was April 30, 2017. Therefore, **I dismiss** the tenant's application in full as the tenant did not apply to dispute the 1 Month Notice within the permitted 10 day timeline under the *Act*.

I do not find it necessary to consider the cause listed in the 1 Month Notice as a result. Section 55 of the *Act* applies and states:

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### **Order of possession for the landlord**

**55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, **the director must grant to the landlord an order of possession of the rental unit if**

- (a) **the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and**
- (b) **the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.**

[My emphasis added]

Given the above and taking into account that I find the 1 Month Notice complies with section 52 of the *Act*, I must grant the landlord an order of possession. Therefore, I grant the landlord an order of possession effective on **June 30, 2017 at 1:00 p.m.**

At the end of the hearing, the tenant asked if he could ask one more question. The tenant was permitted to ask another question and he asked the undersigned arbitrator “Do you spit or swallow?”, and then disconnected from the hearing. The tenant’s advocate who remained on the telephone immediately apologized for the tenant’s behaviour.

### Conclusion

The tenant’s application is dismissed in full, without leave to reapply.

I find the tenancy ended on April 30, 2017. The landlord is granted an order of possession effective June 30, 2017 at 1:00 p.m. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: June 16, 2017

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Residential Tenancy Branch