



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes

OPC

### Introduction

This hearing was scheduled for 11:00 a.m. on this date to deal with a landlord's application for an Order of Possession based on a 1 Month Notice to End Tenancy for Cause. The landlord appeared and was assisted during the hearing. The tenant was represented by his former co-tenant. The landlord testified that she served the tenant with notification of this proceeding by posting the hearing package on the door of the rental unit the day after she picked up the package from the Service BC office. The tenant's representative stated that she moved out of the rental unit in March or April 2017 but confirmed that the tenant was served with notification of this hearing and stated that the tenant had asked her to represent him at the hearing because he would be in court.

The landlord, her assistant and the tenant's representative were sharing the landlord's telephone during the hearing. The parties had to be cautioned to refrain from answering questions posed to a different party and to stop speaking amongst themselves, including disagreeing with each other in the background.

After hearing from the landlord and the tenant's representative, at approximately 11:24 a.m., the tenant's representative stated that she believed the tenant was home, in the rental unit downstairs, and asked to go get him, indicating it would take one minute. I allowed the tenant's representative to go retrieve the tenant. I instructed the landlord to refrain from making any more submissions until the tenant or the tenant's representative returned. At approximately 11:28 a.m. the tenant's representative came back to the phone to say the tenant was coming to the telephone. The tenant did not appear on the telephone, nor did the tenant's representative return to the telephone by 11:31 a.m. The landlord stated she could hear the tenant and the tenant's representative arguing. I was satisfied that the tenant and/or his representative had been given ample opportunity to appear for the hearing and I ended the teleconference call at 11:31 a.m.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

### Background and Evidence

The tenancy started on or about December 23, 2016. The landlord collected a \$200.00 security deposit and the tenants were required to pay rent of \$700.00 on the last day of the preceding month.

The landlord submitted that on April 1, 2017 she personally served the tenant with a 1 Month Notice to End tenancy for Cause as evidenced by the tenant's signature at the bottom of the first page. The 1 Month Notice has a stated effective date of April 30, 2017.

The landlord testified that the tenant paid only a portion of rent for April 2017 and the landlord also served a 10 Day Notice to End Tenancy for Unpaid Rent in mid-April 2017 but she stated that she is not seeking an Order of Possession based on a 10 Day Notice and it was not included in the evidence.

The landlord testified that the tenant did not pay any rent for May 2017 or June 2017 and he continues to occupy the rental unit. The landlord applied for an Order of Possession on May 31, 2017.

The tenant's representative confirmed that a 1 Month notice to End Tenancy for Cause was served when she was still residing in the rental unit; however, she denied that a 10 Day Notice was served.

The tenant's representative indicated the tenant must have disputed the 1 Month Notice. She pointed to the Notice of Hearing as evidence the tenant disputed the Notice. I confirmed that the Notice of Hearing she was looking at was the Notice of Hearing issued for the Landlord's Application for Dispute Resolution and informed the tenant's representative that if the tenant disputed the 1 Month Notice he would be listed as the applicant, not the respondent.

The tenant's representative claims the signature appearing on the bottom of the 1 Month Notice is not the signature of the tenant. The tenant's representative also claims that the 1 Month Notice served to the tenant was not dated, although she acknowledged the effective date reads April 30, 2017, and that the 1 Month Notice was not served until June 1, 2017. After these submissions, the tenant's representative left to go get the tenant, as described in the Introduction section of this decision.

The landlord maintained that the tenant signed the bottom of the 1 Month Notice and that it was served on April 1, 2017.

### Analysis

Section 55(2) of the Act provides for the circumstances when a landlord may request an Order of Possession. Below, I have reproduced section 55(2) with my emphasis underlined:

(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

(a) a notice to end the tenancy has been given by the tenant;

(b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;

(c) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit at the end of the fixed term;

(d) the landlord and tenant have agreed in writing that the tenancy is ended.

I was provided disputed testimony as to the date the subject 1 Month Notice to End Tenancy for Cause was served upon the tenant. The landlord testified that it was served in person on April 1, 2017. The tenant's representative claims it was not served until June 1, 2017. I reject the position of the tenant's representative as I find her testimony to be contradictory and inaccurate. To illustrate: the tenant's representative confirmed at the start of the hearing that she had moved out of the rental unit in March or April 2017; yet, she acknowledged at a later point that the 1 Month Notice was served when she still lived in the rental unit. The tenant's representative also took the position the tenant disputed the 1 Month Notice yet a search of the Residential Tenancy Branch records does not reflect that and the Notice of Hearing was issued in response to the Landlord's Application for Dispute Resolution, not a Tenant's Application for Dispute Resolution. Further, the landlord had completed her Application for Dispute Resolution on May 31, 2017, indicating the 1 Month Notice as served on April 1, 2017 and it would be illogical for the landlord to complete her Application for Dispute Resolution if she had not yet served the 1 Month Notice as suggested by the tenant's representative. Accordingly, I found the landlord's testimony and submissions were consistent and more likely than that of the tenant's representative and I accept that the landlord served the tenant with the subject 1 Month Notice to End Tenancy in April 2017.

Under section 47(5) of the Act, a tenant in receipt of a 1 Month Notice has 10 days to file an Application for Dispute Resolution to dispute the Notice. If the tenant does not dispute the Notice, the tenant is conclusively presumed to have accepted that the tenancy will end and must vacate the rental unit by the effective date. I find the tenant did not file to dispute the 1 Month Notice and I find the tenant is conclusively presumed to have accepted that the tenancy would

end. Therefore, I find the landlord is entitled to an Order of Possession under section 55(2) of the Act.

Considering the 1 Month Notice was served in April 2017 and rent is payable on the last day of the preceding month, the earliest the effective date could be in this case is May 30, 2017 as provided under section 47(2) of the Act. Where an effective date is incorrectly stated, it automatically changes to comply, as provided under section 53 of the Act. Accordingly, I find the tenancy came to an end on May 30, 2017 and since the tenant remains in possession of the rental unit I provide the landlord with an Order of Possession effective two (2) days after service upon the tenant.

### Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service upon the tenant.

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: June 28, 2017

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Residential Tenancy Branch