



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, MNDC, OLC, FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 1 Month Notice pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties were represented at the hearing and given full opportunity to be heard, to present their sworn testimony, to make submissions, and to call witnesses. The landlord represented herself and was accompanied by her spouse and co-landlord, EF.

As both parties were in attendance I confirmed service. The parties confirmed that the landlord's 1 Month Notice to End Tenancy for Cause was served on the tenant on May 28, 2017. The tenant testified that he filed his application for dispute resolution on June 29, 2017. The tenant subsequently filed an amendment to the application for dispute resolution on August 21, 2017. The landlord confirmed receipt of both the tenant's initial application and the subsequent amendment. The parties also confirmed receipt of the respective evidence packages. In accordance with sections 88 and 89 of the *Act*, I find that the parties were duly served with copies of the landlord's 1 Month Notice, the tenant's application and amendment and their respective evidentiary materials.

Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Is the tenant entitled to a monetary award?

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This periodic tenancy began in December, 2015. The landlord served the tenant with a 1 Month Notice on May 28, 2017 by posting on the rental unit door. The tenant testified that he believed there were multiple Notices to End Tenancy issued but eventually confirmed that the present application was filed in response to the May 1 Month Notice on June 29, 2017.

The tenant said that most of his testimony consists of conjecture, premonitions and matters for which he has no proof. The tenant testified that the landlords have harassed him throughout the tenancy. The tenant recalled one occasion where the landlord's husband EF told him "I wish you were dead" and "I am going to get you". The tenant said that shortly after the interaction he developed an infection in his leg which required hospitalization and antibiotics. The tenant said that while he cannot prove there is any casual relation he finds the timing of his health issues to be suspicious.

The tenant's witness was a former tenant in the rental building. He primarily testified about his own interactions with the landlords and the conflicts he had with them. He testified that he recalled the landlords would refer to the tenant as a drug user to third parties.

The landlord's husband EF testified that he has never threatened the tenant. He recalled one interaction with the tenant where the tenant appeared to be extremely high on various drugs and told him that his habits could cause him to die. The landlord testified that they believe any health issues the tenant developed arose from his habitual drug use.

Analysis

Section 47(4) of the Act provides that a tenant may dispute a 1 Month Notice within 10 days after the date the tenant receives the notice. Section 47(5) provides that if a tenant does not make an application in accordance with subsection (4) the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice.

In the present application the parties confirmed that the landlord's 1 Month Notice was served on the tenant on May 28, 2017. The tenant filed his application for dispute resolution on June 29, 2017, outside of the 10 days provided by the Act. I find that the tenant has failed to file an application for dispute resolution within the 10 days of service granted under section 47(4) of the Act. Accordingly, I find that the tenant is conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on the effective date of the 1 Month Notice, June 30, 2017.

I find that the landlord's 1 Month Notice meets the form and content requirements of section 52 of the Act as it is in the approved form and clearly identifies the parties, the address of the rental unit, the effective date of the notice and the reasons for ending the tenancy. Therefore, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the Act. As the effective date of the 1 Month Notice has passed, I issue a 2 day Order of Possession.

I find that there is insufficient evidence in support of the tenant's claim for a monetary award or an order that the landlord comply with the Act, regulations or tenancy agreement. Pursuant to Rule of Procedure 6.6 the onus is on the applicant to show on a balance of probabilities that the facts occurred as claimed. I find that the tenant has not met this onus. I did not find the tenant to be a persuasive witness. His testimony was, by his own admission, conjecture with little basis in facts. While I found the tenant's witness to be credible and cogent I found his evidence to only be marginally relevant to the tenant's claim. I find, based on the totality of the evidence submitted by the parties that the tenant has failed to establish an evidentiary basis for his claims. Consequently, I dismiss this portion of the tenant's application without leave to reapply.

As the tenant's application was unsuccessful the tenant is not entitled to recover the filing fee for this application.

### Conclusion

The tenant's application to cancel the 1 Month Notice is dismissed.

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The portion of the tenant's application seeking a monetary award and an order that the landlord comply with the Act, regulations or tenancy agreement are dismissed without leave to reapply.

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: September 7, 2017

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Residential Tenancy Branch