



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes: CNL, FF

### Introduction:

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the two month Notice to End Tenancy dated June 28, 2017 and setting the end of tenancy for August 31, 2017
- b. An order for repairs

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

The Applicant named in the original Application for Dispute Resolution was BW. She is not a Tenant. However, she stated she is acting as an agent for the Tenant who attended the hearing. I ordered that the Application for Dispute Resolution be amended to add LP as an applicant Tenant as he is the party who have been living in the rental unit and is the Tenant.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the 2 month Notice to End Tenancy was served on the Tenant on June 29, 2017 as the Tenant acknowledged receipt of the Notice to End Tenancy on that date. Further I find that the Application for Dispute Resolution/Notice of Hearing was filed by agent for the Tenant was personally served on the landlord on October 12, 2017. With respect to each of the applicant's claims I find as follows:

### Issues to be Decided:

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the two month Notice to End Tenancy dated June 28, 2017 and setting the end of tenancy for August 31, 2017?

b. Whether the tenant is entitled to a repair order?

Background and Evidence:

The tenancy began in January or February 2015. The present rent is \$850 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$425 and a pet damage deposit of \$100 at the start of the tenancy.

Grounds for Termination:

The Notice to End Tenancy relies on section 49 of the Residential Tenancy Act. That section provides as follows:

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse

Analysis:

Section 49(8) and (9) of the Residential Tenancy Act provides as follows:

“49(8) A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

(9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.”

Policy Guideline #36 provides as follows:

“Notice to End

Application for Arbitration Filed After Effective Date

An arbitrator may not extend the time limit to apply for arbitration to dispute a Notice to End if that application for arbitration was filed after the effective date of the Notice to End.

For example, if a Notice to End has an effective date of 31 January and the tenant applies to dispute said Notice to End on 1 February, an arbitrator has no jurisdiction to hear the matter even where the tenant can establish grounds that there were exceptional circumstances. In other words, once the effective date of the Notice to End has passed, there can be no extension of time to file for arbitration.”

An arbitrator is required to follow the Residential Tenancy Act. The Act provides that a Tenant has 15 days from being served with a 2 month Notice to End Tenancy to file an Application for Dispute Resolution to seek an order to cancel the Notice. If he fails to do so within that time period he is conclusively deemed to have accepted the end of tenancy and must vacate. In this case the Tenant admitted receipt of the Notice to End Tenancy on June 29, 2017. The tenant had to file the Application for Dispute Resolution by July 13, 2017.

An arbitrator has the jurisdiction to grant an extension of time to file an Application for Dispute Resolution to dispute a Notice to End Tenancy only in exceptional circumstances. However, the Policy Guidelines provides that an arbitrator does not have jurisdiction to extend the time if the end of tenancy date has passed. The Notice to End Tenancy set the end of tenancy for August 31, 2017. The tenant did not file an Application for Dispute Resolution until October.

The tenant submitted he did not file an Application for Dispute Resolution because the landlord promised he could have 2 month free rent and the landlord would find a place for him to move to. The landlord denies this. Even if the tenant's evidence was accepted I determined the tenant failed to prove that the landlord withdrew the Notice to End Tenancy or represented he was not intending to rely on the Notice to End Tenancy.

#### Determination and Orders:

I determined that the landlord has established sufficient cause to end the tenancy. As a result I dismissed the tenant's application to cancel the Notice to End Tenancy. I order that the tenancy shall end. I dismissed the claim for repairs as the tenancy is coming to an end.

#### Order for Possession:

The Residential Tenancy Act provides that where an arbitrator has dismissed a tenant's application to cancel a Notice to End Tenancy, the arbitrator must grant an Order for Possession. As a result I granted the landlord an Order for Possession. Normally the Order of Possession would be set for 2 days notice. However, the parties requested the

decision and order be sent by regular mail. It is unlikely they would receive it until sometime near the end of December. In the circumstances I determined it was appropriate to set the Order of Possession for January 31, 2018.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

The tenant gave evidence that the landlord promised to pay him 2 months rent and that he should be entitled to compensation for deficiencies in the rental property. The landlord disputes this. The tenant has the right to file another Application for Dispute Resolution making monetary claims. The tenant did not make a monetary claim in this Application for Dispute Resolution.

**This decision is final and binding on the parties.**

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: December 19, 2017

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Residential Tenancy Branch