



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC MT AAT FFT LRE PSF

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A participatory hearing, by teleconference, was held on December 22, 2017. The Tenant applied for multiple remedies under the *Residential Tenancy Act* (the "Act"). However, I note that a number of these grounds were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues the Tenant applied for, and based on the evidence before me, I find the most pressing issue in this application is related to whether or not the tenancy is ending. As a result, I exercise my discretion to dismiss, with leave to reapply, all of the grounds on the Tenant's application with the exception of the following grounds:

- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the Notice) pursuant to section 66;
- to cancel the Notice issued for cause.

The Landlord's son attended the hearing on behalf of the Landlord. The Tenant's son attended the hearing on behalf of the Tenant. All parties provided affirmed testimony and all parties were provided the opportunity to present evidence orally and in written and documentary form, and to 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 submitted in accordance with the rules of procedure and

evidence that is relevant to the issues and findings in this matter are described in this Decision.

The Landlord submitted 13 pages of evidence to the branch 3 days before the hearing. I turn to the Residential Tenancy Branch Rule of Procedure 3.14, which requires that evidence to be relied upon at a hearing by the respondent must be received by the Residential Tenancy Branch and the applicant not less than 7 days before the hearing. During the hearing I informed the parties that I would not be considering the Landlord's 13 pages of evidence because it was late. This was the only piece of documentary evidence submitted, and I informed the parties that the only evidence I was going to consider was the oral testimony provided by the parties, and the Notice provided by the Landlord after the hearing (with accompanying letter that he gave to the Tenant when he served the Notice).

#### Issues to be Decided

- Should the Tenant be allowed more time to make an application to cancel the Notice?
- Should the Notice be cancelled?
  - If not, is the landlord entitled to an Order of Possession?

#### Background, Evidence, and Analysis

I note the Tenant has applied for more time to make an application to cancel the Notice. I find the Tenant's request to have more time to apply to cancel the Notice must be addressed before considering the remainder of the application.

The Landlord's son testified that he personally gave the Notice to the Tenant in person on September 29, 2017, at around 2 pm. The Landlord's son further stated that the Tenant was putting gas into her vehicle with a jerry can when he gave her the Notice. He further stated that the Tenant's daughter came out towards the end while he was serving the Tenant. The Landlord's son stated that he gave the Tenant both pages of the Notice (including the grounds listed on the second page), and also gave a letter, explaining the reasons for ending the tenancy. In total, the Landlord stated that he gave the Tenant 3 pages that day, September 29, 2017.

The Tenant's son testified that he was not sure exactly when the Notice was delivered, and stated he would have to check with his mother at a later time because he was not there at the time. The Tenant did not have information readily available with respect to the Notice.

When looking at the evidence with respect to the Notice, I find the Landlord has provided a more detailed, reliable and compelling account of what occurred. As such, I have placed more weight on it, and I find it more likely than not that the Landlord served the Tenant with the complete Notice and letter on September 29, 2017, as summarized above.

The Landlord was given a half hour after the hearing ended to provide a copy of the Notice he issued on September 29, 2017, as well as the accompanying letter, which he did. However, he stated he could not locate the second page of the Notice but in the hearing, as noted above, he testified that he did in fact give both pages to the Tenant on September 29, 2017.

Although the Landlord was unable to provide the second page of the Notice after the hearing, based on the evidence before me, I find it more likely than not that the Landlord did provide the second page to the Tenant (including the grounds for ending the tenancy) on September 29, 2017. In my making my determinations on this matter, I have considered that the Tenant's son was not present, and the Landlord's son has provided more compelling evidence on this point.

Section 47 of the *Act* states the Tenant has 10 days to file an application to dispute the Notice. The Tenant had until October 9, 2017, to file an application to cancel the Notice. However, the Tenant did not file an application until October 11, 2017. Although the Tenant has applied for more time to make an application, I have no evidence before me indicating why more time should be granted. As such, I dismiss the Tenant's application for more time to apply to cancel the Notice. Further, the Tenant applied to cancel the Notice late, and is conclusively presumed to have accepted the end of the tenancy, as of the effective date of the Notice, pursuant to section 47(5) of the *Act*. As such, the Tenant's application with respect to the cancellation of the Notice is dismissed, and I will not be addressing the merits any further.

Next, I turn to the following portions of the *Act*:

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. Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord, give the address of the

rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

I find that the Notice complies with the requirements of form and content. The Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenant.

### Conclusion

The Tenant's request for more time to make an application to cancel the Notice is dismissed.

The landlord is granted an order of possession effective **two days after service** on the tenant. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be 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: December 28, 2017

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Residential Tenancy Branch