



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPB, OPC, OPM, CNC, MNDC, FF

### Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession pursuant to section 55;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the tenant served the landlord with the notice of hearing package and the submitted documentary evidence in person on October 30, 2017. The landlords' agents (the landlord) provided affirmed testimony that the tenant was served with their notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on November 29, 2017. The tenant argued that she did not claim the package due to personal issues when she was notified by Canada Post of the package. The landlord provided a copy of the Canada Post Customer Receipt Tracking label as confirmation of service and stated that the package was returned as "refused". The tenant disputes this stating that she did attempt to pick up the package some 3 weeks following receipt of the Canada Post Notice, but was told that it was returned to the sender. The landlord did not provide any proof of "refused" service. I accept the evidence of both parties and find that both parties have been properly served as per sections 88 and 89 of the *Act*. Although the tenant failed to receive the notice of

hearing package and the submitted documentary evidence, the tenant is deemed served 5 days later as per section 90 of the Act.

### Preliminary Issue(s)

During the hearing the landlord clarified that an order of possession was being sought as a result of a mutual agreement to end tenancy and the issuance of a 1 Month Notice to End Tenancy for Cause. The landlord cancelled the monetary claim portion of their application. As such, no further action is required for the landlord's monetary claim.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession as a result of a mutual agreement to end tenancy?

Is the landlord entitled to an order of possession as a result of a 1 Month Notice?

Is the tenant entitled to an order cancelling the 1 Month Notice?

Is the landlord entitled to recovery of the filing fee?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on June 1, 2015 on a fixed term tenancy ending on May 31, 2016 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated April 1, 2015. The monthly rent is \$850.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$425.00 was paid.

The landlord seeks an order of possession as a result of a mutual agreement to end tenancy that was signed by both parties and the issuance of 1 Month Notice.

The landlord claims that a mutual agreement to end the tenancy dated April 16, 2017 was signed by both parties to be effective on December 31, 2017. The landlord has submitted in support of this claim a signed copy dated April 16, 2017 of a mutual agreement to end tenancy.

The tenant confirmed that a mutual agreement to end the tenancy was signed on April 16, 2017 and agreed to end the tenancy on December 31, 2017. However, the tenant

claims that due to personal issue(s) she did not realize what she was agreeing to. The tenant went on to clarify a long and turbulent relationship with the landlord over a previous dispute hearing and the resulting mutual agreement to end tenancy prior to the April 16, 2017 mutual agreement. The tenant argued that the landlord failed to fully explain the content of the agreement and that she was under the impression that it was a tenancy agreement for a further 1 year period.

The landlord also seeks an order of possession as a result of a 1 Month Notice to End Tenancy issued for Cause dated October 22, 2017 which sets out an effective end of tenancy date of December 31, 2017. The reason set is:

Breach of a Material Term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

In this case, the landlord stated that the tenant was given notice that the tenancy would be ending and not extended due to the mutual agreement to end the tenancy on December 31, 2017. The landlord stated that the tenant had notified him that the tenant was not vacating the rental unit on December 31, 2017.

The tenant stated that at no time did she give notice to the landlord that she was not vacating the rental premises on December 31, 2017.

During the hearing the landlord confirmed that the landlord's 1 Month Notice was premature in issuing on October 22, 2017 as he did not have any formal notification from the tenant refusing to vacate the rental premises, nor did the effective end of tenancy pass. No further written notice was given to the tenant. As such, I find that the landlord's 1 Month Notice dated October 22, 2017 was premature and is dismissed without leave to reapply.

### Analysis

Section 55(2) of the Act states in part that a landlord may request an order of possession when the landlord and tenant have agreed in writing that the tenancy is ended.

In this case, both parties have confirmed that a mutual agreement to end tenancy was entered into on April 16, 2017 with an end of tenancy date of December 31, 2017.

However, the tenant had disputed that the mutual agreement was not valid due to personal issue(s) occurring at the time of signing the agreement and that the landlord

had failed to fully explain the content and purpose of the mutual agreement. I find that the tenant's argument is without merit as it cannot be said that she did not understand the document. During the hearing the tenant stated that she had reviewed the mutual agreement dated April 16, 2017 and that it was a second such document that she had signed in agreement with the landlord. The tenant failed to provide sufficient evidence that she did not understand the document or was incapable of understanding its intended purpose. The landlord's application for an order of possession is granted, effective 2 days after service upon the tenant.

The landlord having been successful is entitled to recovery of the \$100.00 filing fee.

### Conclusion

The tenant's application to cancel the 1 Month Notice dated October 22, 2017 is granted.

The landlord is granted an order of possession.

The landlord is granted a monetary order for recovery of the \$100.00 filing fee.

These orders must be served upon the tenant. Should the tenant fail to comply with the order(s), the order(s) may be filed in the Supreme Court of British Columbia and enforced as order(s) of those courts.

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: January 15, 2018

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Residential Tenancy Branch