



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LOOKOUT HOUSING AND HEALTH SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes          OPC

### Introduction

This hearing dealt with the landlord's application for an Order of Possession for cause. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

At the outset of the hearing, the tenant requested an adjournment. The tenant stated his electric wheelchair broke down in the last week and that he had been focused on having it repaired and he did not have the opportunity to meet with an advocate. The tenant acknowledged that he has been aware of this proceeding for approximately two months.

The landlord's agent objected to adjourning this proceeding. The landlord pointed out that this proceeding is to deal with a Notice to End Tenancy served in August 2017; that the tenant could have contacted an advocate by telephone and had the advocate participate in the hearing over the telephone. The landlord stated the tenant has already been shown alternative housing that he rejected and the landlord suggested the tenant is merely trying to delay the proceeding.

Considering this proceeding is being conducted over the telephone and having heard the tenant could have availed himself of the services of an advocate over the telephone; the time that has passed since the 1 Month Notice was served; that the tenant has been aware of this proceeding for approximately two months, I declined to grant the tenant's request for adjournment. I am of the view that the tenant's request is due to his failure to act with due diligence and to delay the proceeding any longer would be prejudicial to the landlord. Accordingly, I explained the hearing process to the parties and I proceeded to hear this matter.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for cause?

### Background and Evidence

The landlord is a society that provides low barrier subsidized housing to low income and disabled individuals. The tenancy started on May 2, 2017. The tenant is responsible for paying subsidized rent in the amount of \$375.00 on the last day of the preceding month.

On August 24, 2017 the landlord a 1 Month Notice to End tenancy for Cause ("1 Month Notice") to the tenant in person. The 1 Month Notice was provided as evidence for this proceeding. I noted that it is in the approved form and is duly completed. The tenant did not file an Application for Dispute Resolution to dispute the Notice. The 1 Month Notice with a stated effective date of October 1, 2017.

The tenant continues to occupy the rental unit. The landlord has received monies on behalf of the tenant for the months of November 2017, December 2017 and January 2018 which were accepted for "use and occupancy only."

The landlord seeks to regain possession of the rental unit as soon as possible.

The tenant testified that he did not dispute the 1 Month Notice because he was under the impression he could continue to occupy the rental unit until such time suitable housing was found for him or if he did not cause any major problems. The tenant acknowledged that he was shown alternative housing but he found it to be in an unsuitable location and he rejected it. The tenant described himself as being a senior with disabilities and the alternative housing shown to him was in an area with high drug use and crime. As for the persons who allegedly made the above-described statements to the tenant, the tenant provided the first names of two individuals. One of the individuals named by the tenant was at the hearing and is identified as being a Tenant Support Worker. The Tenant Support Worker denied making the statements as described by the tenant. Rather, the Tenant Support Worker described his role as assisting tenants in finding alternative housing and/or pointing them to other support services. The other individual named by the tenant was not at the hearing and I heard this individual is an employee of Coastal Health, not the landlord.

### Analysis

Where a tenant receives a 1 Month Notice to End Tenancy for Cause, the tenant has 10 days after receiving it to file an Application for Dispute Resolution to dispute the Notice. If the tenant does not file an Application for Dispute Resolution to dispute the Notice, the tenant is conclusively presumed pursuant to section 47(5) of the Act to have accepted that the tenancy will end on the effective date and the tenant must vacate the rental unit.

Upon review of the 1 Month Notices that was admitted into evidence, I find that it is in the approved form and it is duly completed. I further accept the unopposed evidence that the 1

Month Notice was duly served upon the tenant on August 24, 2017. The tenant did not dispute the 1 Month Notices that was served upon him.

I have considered whether there is sufficient evidence to demonstrate that the parties mutually agreed to withdraw the 1 Month Notice. I find the disputed oral testimony that the Tenant Support worker withdrew the Notice to be insufficient evidence. I also find that any statements made by a person who does not act on behalf of the landlord are not binding upon the landlord. Also of consideration is that when rent was accepted by the landlord after the effective date of the Notice, the landlord communicated in writing to the tenant that the money was being accepted for use and occupancy only and that the eviction was still in effect. Therefore, I find I unsatisfied that the parties mutually agreed to withdraw the 1 Month Notice.

In light of the above, I find the tenancy has ended and the landlord is entitled to regain possession of the rental unit based on the undisputed 1 Month Notice served upon the tenant on August 24, 2017.

Considering the landlord accepted monies for use and occupancy of the rental unit for the month of January 2018 and the tenant is a senior with disabilities, I provide an Order of Possession effective January 31, 2018.

#### Conclusion

The landlord is provided an Order of Possession effective January 31, 2018 to serve and enforce 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: January 16, 2018

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Residential Tenancy Branch