



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SILVERBIRD HOLDINGS LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

For the landlord: OPC  
For the tenant: CNC OLC RP

### Introduction

This hearing was convened as a result of the cross-applications of the parties for dispute resolution (“applications”) under the *Residential Tenancy Act* (“Act”). The landlord applied for an order of possession based on a 1 Month Notice to End Tenancy for Cause dated December 13, 2017 (“1 Month Notice”). The tenant applied to cancel the 1 Month Notice, for an order directing the landlord to comply with the Act, regulation or tenancy agreement, and for an order for the landlord to make regular repairs to the unit, site or property.

The owner of the landlord company (“landlord”) and the tenant attended the teleconference hearing. The hearing process was explained to the parties, and the parties were given an opportunity was given to ask questions about the hearing process. Thereafter the landlord and tenant gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me. I have reviewed all evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The parties confirmed that they received the documentary evidence and an application from the other party and that they had the opportunity to review the documents prior to the hearing.

### Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing. The parties confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

### Issues to be Decided

- Should the 1 Month Notice be cancelled or upheld?
- Is the landlord entitled to an order of possession under the *Act*?

### Background and Evidence

The landlord confirmed that a written tenancy agreement did not exist between the parties. The parties agreed that a month to month tenancy began in the fall of 2013. The parties also agreed that current monthly rent was \$700.00 per month and is due on the first day of each month.

Regarding the 1 Month Notice, the tenant confirmed being served with the 1 Month Notice on December 13, 2017 which is the same date the 1 Month Notice was dated. The tenant disputed the 1 Month Notice on January 3, 2018. The effective vacancy date listed on the 1 Month Notice is January 15, 2017 which the parties were advised automatically corrects under section 53 of the *Act* to January 31, 2018. The tenant continues to occupy the rental unit. The parties were also advised that I found the 2017 date to be an obvious error and that the year was clearly meant to state 2018.

The landlord alleged three causes in the 1 Month Notice and the parties agreed that money for use and occupancy has been paid by the tenant for March 2018. .

### Analysis

Based on the testimony of the parties and the documentary evidence before me, and on the balance of probabilities, I find the following.

**1 Month Notice** – Pursuant to section 47 of the *Act*, if the tenant does not dispute the 1 Month Notice within 10 days of being served, the tenant is conclusively presumed to have accepted that the tenancy ends on the corrected effective vacancy date listed on the 1 Month Notice which was January 31, 2018. As the tenant did not dispute the 1 Month Notice until January 3, 2018, which is seven days late as the tenant had until

December 27, 2017 to file his application as per section 25 of the *Interpretation Act* and taking into account that December 25, 2017 and December 26, 2017 were holidays, I dismiss the tenants' application to dispute the 1 Month Notice as the tenant filed outside of the allowable time limit and did not apply for an extension of time to dispute a notice to end tenancy. Therefore, I dismissed the tenant's application without leave to reapply as the tenant did not dispute the 1 Month Notice within the 10 day timeline provided under the *Act*.

Given the above, section 55 of the *Act* applies and states:

**Order of possession for the landlord**

**55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if**

**(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and**

**(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.**

[My emphasis added]

As a result of the above and taking into account that I find the 1 Month Notice complies with section 52 of the *Act*, I grant the landlord an order of possession effective **March 31, 2018 at 1:00 p.m.** as the tenant continues to occupy the rental unit and has paid for use and occupancy for March 2018.

As the landlord has succeeded with their application, I grant the landlord the recovery of the cost of the **\$100.00** filing fee which was paid. I authorize the landlord to retain **\$100.00** from the tenant's \$250.00 security deposit, in full satisfaction of the recovery of the cost of the filing fee pursuant to section 72 of the *Act*. I find that the tenant's security deposit balance is now **\$150.00** as a result of the above.

I caution the landlord to ensure that all tenancy agreements in the future are in writing as required by section 13 of the *Act*.

Conclusion

The tenant's application is dismissed in full without leave to reapply. I do not find it necessary to consider the remainder of the tenant's application as the tenancy ended on January 31, 2018.

The landlord's application is successful. The tenancy ended on January 31, 2018. The landlord has been granted an order of possession effective March 31, 2018 at 1:00 p.m. The tenant must be served with the order of possession and the order of possession may be filed in the Supreme Court of British Columbia to be enforced as an order of that court.

The landlord has been granted the recovery of the cost of the \$100.00 filing fee pursuant to section 72 of the *Act*. The landlord has been authorized to retain \$100.00 from the tenant's \$250.00 security deposit, in full satisfaction of the recovery of the cost of the filing fee. The tenant's security deposit balance is now \$150.00.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: March 2, 2018

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Residential Tenancy Branch