



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FFT

### Introduction

This is an Application for Dispute Resolution (“Application”) brought by the Tenant to cancel a One-Month Notice to End Tenancy for Cause dated April 18, 2018. The Tenant also requests payment of his filing fee of \$100.00.

The Landlord and her interpreter were present for the hearing; the Tenant was also present for the scheduled hearing. I find that the notice of hearing was properly served and that evidence was submitted and served. Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed evidence, make submissions, and to cross-examine the other party on the relevant evidence provided in this hearing.

### Issue(s) to be Decided

Is the Tenant entitled to a cancellation of the One-Month Notice to End Tenancy for Cause, pursuant to section 47(4) of the *Residential Tenancy Act* (“Act”)?

If the Application is dismissed, is the Landlord entitled to an Order for Possession pursuant to section 55 of the Act?

Is the Tenant entitled to payment of the filing fee, pursuant to section 72 of the Act?

### Background and Evidence

The Landlord and Tenant entered into a standard tenancy agreement which was submitted into evidence. The tenancy began on October 14, 2017 for \$700.00 per month, payable on the 1<sup>st</sup> of each month. A security deposit of \$300.00 was also paid. These terms are not in dispute.

However, there is some disagreement as to the length of the tenancy. Under paragraph 2 of the written agreement, the “length of tenancy” states, in part:

*“ This tenancy starts 14 Oct 2017...*

*This tenancy is*

X *(a) on a month-to-month basis [additional words printed: Fix three months]*

     *(b) for a fixed length of time\_\_\_\_\_ ending on \_\_\_\_\_ [not checked or completed]*

     *At the end of this fixed term of time (you must check either i or ii below)*

     *i) the landlord and tenant may agree to enter into a new tenancy agreement...*

     *ii) the tenancy ends and the tenant must move out of the residential unit – if you choose this option, both the landlord and tenant must initial the boxes to the right. The tenant must move out on or before the last day of the tenancy...”*

Nothing was completed in section (b) for a fixed term tenancy and no initials are noted, signifying no agreement that the Tenant was to move out at the end of three months or on a set date.

The Landlord argues that the Tenant moved in on October 14<sup>th</sup> and that he was expected to vacate on January 14, 2018. They have now re-rented the property to a new tenant who wants possession. The Landlord also claims that the Tenant has failed to pay the May rent, and that the “month-to-month” term in the agreement only refers to the payment of the rent on a monthly basis.

The Tenant states that he originally inquired about a 6-month tenancy and was told that he could remain after the initial 3 months, unless the Landlord gave advance notice. At the end of that period, he heard nothing from the Landlord and assumed he could continue with the month-to-month tenancy; however, he later received a One Month Notice to End Tenancy dated April 18, 2018 under his door. No reason is checked off on that Notice, and he states he would like the tenancy to continue.

In addition to the Notice, the Tenant filed an email from the Landlord dated April 19, 2018 which states that the Tenant is a good tenant who pays rent on time, as well as a letter dated April 23, 2018 from the Landlord which states, “*Our reason for asking you this way is because we have entered into a lease agreement with [name redacted] for*

*this room starting from May 1, 2018...” This same letter also states, “We both agreed to implement the contract on a monthly basis. Now we send you a month’s notice in advance to move out on May 30<sup>th</sup>...” The Tenant states that he is prepared to pay the May rent within 5 days, pending the outcome of this Application.*

### Analysis

The Landlord argues that this was a fixed term tenancy which has effectively ended. New legislation was introduced in December of 2017 which restricts a landlord’s ability to remove a tenant at the end of a fixed term. Policy Guideline 30 states in part:

*“The Legislation sets out the requirements for tenancy agreements. A fixed term tenancy agreement **must state the date** the term ends.*

*If a tenancy agreement requires the tenant to vacate the rental unit at the end of the fixed term, the **reason must be indicated** on the agreement and **both parties must have their initials next to this term** in the agreement in order for it to be enforceable.*

*A tenancy agreement may only include a requirement that the tenant vacate the rental unit at the end of the fixed term if:*

*☐ The tenancy agreement is a sublease agreement; or*

*☐ The tenancy is a fixed term tenancy in circumstances prescribed in section 13.1 of the Residential Tenancy Regulation. [note: this pertains to the landlord or close family member residing in the rental property]*

*If the tenancy agreement does not require the tenant to vacate the rental unit at the end of the term, and if the parties do not enter into a new tenancy agreement, **the tenancy continues as a month-to-month tenancy.**” [bolding added]*

Further, in paragraph A:

*“ Effective December 11, 2017, a tenancy agreement may only include a requirement that the tenant vacate the rental unit at the end of a fixed term **if:***

*☐ The tenancy agreement is a **sublease agreement**; or*

*☐ The tenancy is a **fixed** term tenancy in circumstances prescribed in section 13.1 of the Residential Tenancy Regulation.*

*Transitional provisions in the Legislation **apply this change retrospectively. If a fixed term tenancy agreement is currently in effect and contains a clause that requires a tenant to vacate the rental unit or manufactured home site on a specified date, that clause is no longer enforceable in most circumstances.**” [bolding added]*

The Landlord has the burden of proving that this was a fixed term tenancy. I have reviewed the tenancy agreement and find that there is no specific vacate clause contained therein. The parties did not agree to a specific “move out” date, nor did the parties acknowledge with initials that this was their intention at the start of the tenancy. I find that the Landlord has failed to meet this burden of proof as the agreement and her subsequent letter indicates this is a month-to-month tenancy.

Even if the Landlord had proven that this was a fixed term tenancy, the Landlord has provided no evidence that she (or a close family member) intends to reside in the premises or that this was a sub-lease arrangement. Under the circumstances, there would have been no justification to enforce a vacate clause in any event.

Accordingly, I find that this is a month-to-month tenancy, requiring proper notice in order to require the Tenant to vacate. For instance, the Landlord may end the tenancy with a 10-Day Notice for Unpaid Rent or with a One Month Notice to End Tenancy for Cause, if the circumstances warrant it.

I now turn my attention to the One Month Notice to End Tenancy for Cause dated April 18, 2018 which I find was properly served on the Tenant and which he disputed within the time limitation. This is the only Notice served by the Landlord that is the subject of this Application. Under section 47 of the Act, possible reasons to end a tenancy for cause are provided:

*“47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*

- (a) the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;*
- (b) the tenant is repeatedly late paying rent;*
- (c) there are an unreasonable number of occupants in a rental unit;*
- (d) the tenant or a person permitted on the residential property by the tenant has
  - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,**

- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or*
  - (iii) put the landlord's property at significant risk;*
- (e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that*
  - (i) has caused or is likely to cause damage to the landlord's property,*
  - (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or*
  - (iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;*
- (f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;*
- (g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32*
- (3) [obligations to repair and maintain], within a reasonable time;*
- (h) the tenant*
  - (i) has failed to comply with a material term, and*
  - (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;*
- (i) the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 [assignment and subletting];*
- (j) the tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property;*
- (k) the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;*
- (l) the tenant has not complied with an order of the director within 30 days of the later of the following dates:*

*(i) the date the tenant receives the order;  
(ii) the date specified in the order for the tenant to  
comply with the order.”*

I find that the evidence and testimony fails to provide any cause to end this tenancy, as required under section 47. The Notice does not contain a “reason” as no box was checked on the Notice to provide the Tenant with notification of a reason; the Landlord followed up with a letter stating it was because they viewed this to be a fixed term requiring the Tenant to vacate and that they had re-rented to a new tenant. This is not a sufficient justification under the legislation to end a tenancy. The Notice is hereby cancelled and of no force or effect.

The Application is allowed and the tenancy shall continue on a month-to-month basis until such time that it is terminated with proper notice by either party. As the Tenant was successful in his Application, he is awarded the filing fee of \$100.00. I order, pursuant to Section 72(2)(a), that the Tenant may deduct this amount from one future rent payment in satisfaction of this award.

#### Conclusion

The One Month Notice to End Tenancy dated April 18, 2018 served by the Landlord on the Tenant is hereby cancelled.

The Tenant is entitled to recovery of the filing fee of \$100.00.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Manufactured Home Park Tenancy Act*.

Dated: May 22, 2018

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Residential Tenancy Branch