



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, FFT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the 10 Day Notice to End Tenancy, pursuant to section 46;
- cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that he served the landlord the notice of dispute resolution package by registered mail on July 16, 2018. The tenant provided the Canada Post Tracking Number to confirm this registered mailing. The landlord confirmed receipt of the dispute resolution package but did not know on what date she received the package. I looked up the tracking number provided by the tenant, the Canada Post tracking website indicated that the package was picked up and signed for by the landlord on July 18, 2018. I find that the landlord was served with this package on July 18, 2018, in accordance with section 89 of the *Act*.

The tenant testified that he personally served the landlord with an amendment to the dispute resolution proceedings on July 17, 2018. The landlord confirmed receipt of the amendment but did not know on what date she was served with it. I find that, pursuant to section 89 of the *Act*, that the landlord was served with the dispute resolution package on July 17, 2018 in accordance with section 89 of the *Act*.

At the beginning of the hearing the landlord provided her legal name which differs slightly from the name on the dispute resolution materials. Pursuant to section 64 of the *Act*, I amended the dispute resolution materials to reflect the full legal name of the landlord.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

#### Issue(s) to be Decided

1. Is the tenant entitled to cancellation of the 10 Day Notice to End Tenancy, pursuant to section 46 of the *Act*?
2. Is the tenant entitled to cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47 of the *Act*?
3. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?
4. If the tenant's application is dismissed or the landlord's notice to end tenancy is upheld, is the landlord entitled to an Order of Possession, pursuant to section 55 of the *Act*?

#### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on December 1, 2017 and is currently ongoing. Monthly rent in the amount of \$1,650.00 is payable on the first day of each month. A security deposit of \$825.00 and a pet damage deposit of \$825.00 were paid by the tenant to the landlord. A written tenancy agreement was signed by both parties but a copy was not submitted for this application.

The landlord testified that on June 27, 2018 she served the tenant with a One Month Notice to End Tenancy with an effective date of July 31, 2018 by posting it on the

tenant's door. The One Month Notice stated the following reason for ending the tenancy: tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. The tenant testified that he received the One Month Notice on June 27, 2018.

The tenant testified that on July 5, 2018 he attended at a Service BC office to dispute the One Month Notice. The tenant testified that he was told that he could not file a separate application to dispute the One Month Notice because he already had a hearing scheduled. The tenant testified that later that day, on July 5, 2018, he called an information officer at the Residential Tenancy Branch (the "RTB") and it was his understanding from that telephone conversation that he could file an amendment to the original hearing and have both the 10 Day Notice and the One Month Notice heard together.

The tenant testified that on July 16, 2018 he called the RTB again and an information officer advised him that he had to file the amendment in form 42 in person with Service Canada. The tenant filed his amendment on July 16, 2018. When asked why he did not dispute the One Month Notice between July 5<sup>th</sup> and July 16, 2018 the tenant cited child care and transportation difficulties.

The landlord testified that she issued the One Month Notice because the tenant's neighbours told her that the tenant was taking pictures of their children swimming in their backyard pool. The landlord did not have any evidence to support this accusation and the tenant's neighbours did not testify at the hearing.

The tenant testified that he did not take any photographs of the neighbour's children swimming in the pool. The tenant testified that he has been having ongoing issues with the neighbours and that the neighbours fabricated this story. The tenant testified that he did have a baby monitor on his deck and that he told his neighbours that it was hooked up to his security system but that in reality the monitor was not plugged in or attached to a security system.

The landlord testified that the tenant only paid \$460.00 on June 1, 2018 when \$1,650.00 was due. On June 3, 2018 the landlord served a 10 Day Notice to End Tenancy for unpaid rent with an effective date of June 13, 2018 (the "10 Day Notice") on the tenant by posting the 10 Day Notice on the tenant's door. The tenant testified that he received the 10 Day Notice on June 3, 2018. The landlord testified that she did not receive more money until July 1, 2018 when she received \$1,376.00.

The tenant testified that the rental property required repairs and that the landlord agreed to lower his rent in compensation for the repair work he completed. The tenant also testified that the electricity for his unit and the unit below are in his name and that he is required to pay 60% of the bill and the landlord is supposed to pay for 40% of the bill, so his rent is further reduced every month. The tenant testified that he paid the landlord \$460.00 on June 1, 2018 which is what was owed after the deductions the landlord approved were taken off. In support of this, the tenant submitted into evidence a rent receipt dated June 1, 2018 for \$460.00. Underneath the stated sum of \$460.00 paid to the landlord, the receipt states "\$1,190.00 rental required – repairs black mold, failed outlet, electrical repairs- paid in full". The receipt is signed by the landlord.

The landlord testified that she only signed that receipt because she was scared of the tenant and just wanted to get away from him. The landlord testified that she never agreed to deduct money from the rent for repairs completed by the tenant. The landlord testified that the tenant refused to allow any repair people into the rental property to complete the repairs and insisted on completing them himself so as to decrease his rent. The landlord testified that she never agreed to this.

### Analysis

Based on the testimony of both parties and the evidence provided, I find that service of the One Month Notice was effected on the tenant on June 27, 2018, in accordance with section 88 of the *Act*. Upon review of the One Month Notice, I find that it is compliant with the form and content requirements of section 52 of the *Act*.

Section 47(4) and section 47(5) state that if a tenant who has received a One Month Notice does not make an application for dispute resolution within 10 days after the date the tenant receives the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

In this case, the tenant did not dispute the One Month Notice within 10 days of receiving it. The tenant had 10 days from the receipt of the One Month Notice to file with the RTB to dispute the One Month Notice. 10 days from June 27, 2018, when the tenant received the One Month Notice, was July 7, 2018. The tenant filed his amendment to dispute the One Month Notice on July 16, 2018, nine days late. It is the tenant's responsibility to dispute a notice to end tenancy within the required time periods, regardless of child care and/or transportation issues.

I find that, pursuant to section 47 of the *Act*, the tenant's failure to file to dispute the One Month Notice within 10 days of receiving the One Month Notice led to the end of this tenancy on the effective date of the notice. In this case, this requires the tenant to vacate the premises by July 31, 2018. I find that the landlord is entitled to a 2-day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

As I have found that the landlord is entitled to an Order of Possession due to the conclusive presumption found in section 47(5), I decline to consider the tenant's application to cancel the 10 Day Notice.

### Conclusion

I dismiss the tenant's application to cancel the One Month Notice and the tenant's application to recover the \$100.00 filing fee, without leave to reapply.

I dismiss the remainder of the tenant's application with leave to reapply.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenant**. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: July 30, 2018

---

Residential Tenancy Branch