



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 450617 BC LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, OPC

### Introduction

This was a cross application hearing that dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for cancellation of the landlord's notice to end tenancy for cause, pursuant to section 47.

This hearing also dealt with the landlord's application for an Order of Possession, pursuant to section 55 of the *Act*.

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.

### Preliminary Issue- Service of Dispute Resolution Applications and Evidence

The tenant testified that he served the landlord the notice of dispute resolution package by registered mail on June 21, 2018. The landlord confirmed receipt of the dispute resolution package on June 21, 2018. I find that the landlord was served with this package on June 21, 2018, in accordance with section 89 of the *Act*.

The landlord testified that he served the tenant the notice of dispute resolution package (the "package") by posting the package and the landlord's evidence on the tenant's door on June 30, 2018. The tenant testified that he did not receive the landlord's notice of dispute resolution package and or evidence package.

Section 89(2) of the *Act* states that an application by a landlord under section 55 [*order of possession for the landlord*], must be given to the tenant in one of the following ways:

- (a) by leaving a copy with the tenant;
- (b) by sending a copy by registered mail to the address at which the tenant resides;

- (c)by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
- (d)by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;
- (e)as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

While the method of service of the landlord's package was permitted under section 89(2) of the *Act*, the tenant testified that he did not receive it. I find that service of the package was not effected on the tenant; therefore, the landlord's application is dismissed with leave to reapply. I also find that service of the landlord's evidence was not effected on the tenant.

Section 3.14 of the *Residential Tenancy Branch Rules of Procedure* (the "Rules") states that evidence not submitted at the time of Application for Dispute Resolution that are intended to be relied on at the hearing must be received by the respondent not less than 14 days before the hearing. I find that since the tenant did not receive the landlord's evidence package, all evidence submitted by the landlord, are not admitted into evidence.

#### Issue(s) to be Decided

1. Is the tenant entitled to cancellation of the landlord's notice to end tenancy for cause, pursuant to section 47 of the *Act*?
2. If the landlord's notice to end tenancy for cause is upheld or the tenant's application for dispute resolution is dismissed, 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 is currently ongoing. Monthly rent in the amount of \$670.00 is payable on the first day of each month. A security

deposit of \$335.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties but a copy was not accepted into evidence.

The landlord testified that on June 12, 2018 the landlord posted a One Month Notice to End Tenancy for Cause, with an effective date of July 15, 2018 (the "One Month Notice") on the tenant's door. The tenant confirmed receipt of the One Month Notice on June 12, 2018.

The One Month Notice stated the following reasons for ending the tenancy:

- Tenant is repeatedly late paying rent.
- Tenant or a person permitted on the property by the tenant has:
  - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
  - put the landlord's property at significant risk.
- Security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.

Both parties agreed that the tenant was late paying rent on two occasions.

The landlord testified that the tenant's rental unit has a flea infestation and that on June 8, 2018 he hired a pest control company to spray the tenant's unit as well as the hallway outside of the tenant's unit. The landlord testified that the tenant's cat is the cause of the flea problem. The landlord testified that he is afraid that the fleas from the tenant's unit will spread to other units and cause an infestation, thereby putting his property at risk as well as the health and safety of other occupants. The landlord testified that the pest control company said that the fleas originated in the tenant's unit.

The tenant denies that his cat has fleas. The tenant testified that his cat has been on flea medication for four years and that after he received the One Month Notice, he took his cat to the vet who confirmed that his cat does not have fleas. The tenant agreed that a pest control company attended at his unit on June 8, 2018 and left traps but that the traps did not catch anything that he could see.

The tenant's advocate testified that she has been in the tenant's rental unit on more than one occasion and that she has interacted with the tenant's cat and has never seen any evidence of a flea problem.

The landlord testified that he purchased the rental property in 2016 at which time the tenant was already residing in the rental unit in question. The landlord testified that the tenant never paid a pet security deposit and that this is a pet free building. A tenancy agreement was not accepted into evidence.

The tenant testified that he has had a cat since he moved into the building and that the previous owner allowed him to have a cat without paying a pet damage deposit because the building had a rodent problem.

### Analysis

Based on the testimony of both parties, I find that service of the One Month Notice was effected on the tenant on June 12, 2018, in accordance with section 88 of the *Act*.

Where a tenant disputes a one month notice to end a tenancy for cause given by a landlord, the onus is on the landlord to prove that the tenant has breached section 47 of the *Act*.

Section 47 of the *Act* states in part that a landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- 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;
- the tenant or a person permitted on the residential property by the tenant has
  - seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
  - put the landlord's property at significant risk.
- Tenant is repeatedly late paying rent.

A tenancy agreement was not accepted into evidence; therefore, it is not possible to determine if a pet damage deposit was required to be paid under the tenancy agreement. I find that the landlord has not met the required burden of proof that the tenant was required to pay a pet damage deposit.

The landlord testified that the tenant's cat and apartment have fleas and that these fleas put his property at risk and jeopardize the health and or safety of the landlord and or other occupants. Both parties agree that a pest control agent attended the rental property but the parties do not agree on whether or not fleas were found in the rental property. Based on the conflicting testimony, I find that the landlord has not met the required burden of proof to show that the rental property in question has fleas and that

these fleas put the landlord's property at risk and, or jeopardize the health and, or safety of the landlord and or other occupants.

Policy Guideline 38 states that three late payments are the minimum number sufficient to justify a notice to end tenancy under section 47(1)(b). In this case, both parties agreed that the tenant was late paying rent on only two occasions.

I find that the landlord has not proved that the tenant breached any part of section 47 of the *Act*, I therefore cancel the landlord's One Month Notice for Cause.

### Conclusion

I find that the One Month Notice is of no force or effect.

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: August 16, 2018

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Residential Tenancy Branch