



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FFT

### Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”), and for the recovery of the filing fee paid for this application.

The Landlord and the Tenant were both present for the duration of the teleconference hearing. The parties confirmed that the Notice of Dispute Resolution Proceeding package and copies of each party’s evidence was served as required.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written 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.

### Issues to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled?

If the One Month Notice to End Tenancy for Cause is upheld, is the Landlord entitled to an Order of Possession?

Should the Tenant be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

### Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy began in December 2015. Monthly rent is \$750.00 and a security deposit of \$375.00 was paid at the outset of the tenancy.

On August 31, 2018, the Landlord served the Tenant with a One Month Notice by giving it to the Tenant's spouse.

The One Month Notice, dated August 31, 2018 states the following as the reason for ending the tenancy:

- Rental unit/site must be vacated to comply with a government order

The effective end of tenancy date of the One Month Notice was stated as September 30, 2018.

The Landlord submitted four letters from the City into evidence. One letter, dated June 20, 2018, was regarding "untidy or unsightly premises". A follow-up letter, dated August 8, 2018, states that the issue had not been resolved.

Another letter, also dated June 20, 2018 was regarding "wrecked vehicles" on the property.

The last letter, dated June 20, 2018 states that there is an illegal secondary suite at the home. The letter states in part the following:

'The illegal dwelling unit must be removed from the Property, which requires the following alterations:

- All cooking facilities must be removed from the illegal dwelling unit and any openings for these facilities must be wall-boarded over.
- The electrical breaker controlling the range receptacle must be removed and its spot blanked on the electrical panel.' (Reproduced as written)

The letter further states that a charge will be added to the Landlord's property taxes until the illegal dwelling unit is removed from the property.

The Landlord stated that she asked the City to provide her with more time to have the Tenant move out and the unit removed.

The Tenant stated that he is not in agreement with the One Month Notice and the requirement to move out based on a letter from the City. He stated that there are three rental units in the home; the upstairs, the two-bedroom unit where he resides and a bachelor suite. The Tenant stated that there are still tenants residing in the other rental units, and the letter from the City is not clear that it is the two-bedroom unit that is illegal.

The Landlord responded by stating that the upstairs tenants sometimes stay at the bachelor suite, but it is not rented separately. She said she had many conversations with the City and is aware that the suite in question is the two-bedroom unit where the Tenant resides.

The Tenant provided further testimony that the letter issued by the City does not state that the rental unit has to be removed, just that it has to be registered and the Landlord has to pay additional property taxes.

The Tenant stated that he received the One Month Notice on September 4, 2018. He confirmed that his spouse received the notice on August 31, 2018, when the Landlord gave it to her, but as he was busy at work, he did not receive it until September 4, 2018. He applied to dispute the One Month Notice on September 11, 2018.

### Analysis

I refer to Section 47(4) of the *Act*, which states that a tenant has 10 days in which to dispute a One Month Notice.

I also note that Section 88(e) states that service of a document includes the following:

(e) by leaving a copy at the person's residence with an adult who apparently resides with the person;

As the Landlord gave the One Month Notice to the Tenant's spouse on August 31, 2018, I find that the notice was duly served in accordance with Section 88 of the *Act*. As such, the Tenant had 10 days from August 31, 2018 in which to file an Application for Dispute Resolution.

The Tenant applied on September 11, 2018, which is 11 days after the One Month Notice had been served. As such, Section 47(5) of the *Act* applies, and the Tenant is conclusively presumed to have accepted that the tenancy ends based on the One Month Notice.

The Tenant's application to cancel the One Month Notice is dismissed. Upon review of the One Month Notice submitted into evidence, I find it in compliance with Section 52 of the *Act*. Therefore, pursuant to Section 55(1) of the *Act*, I grant the Landlord an Order of Possession, effective October 31, 2018 at 1:00 pm.

As the Tenant was not successful in his application, I decline to award the recovery of the filing fee paid for the Application for Dispute Resolution.

### Conclusion

I grant an Order of Possession to the Landlord effective **on October 31, 2018 at 1:00 pm**. This Order must be served 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: October 26, 2018

---

Residential Tenancy Branch