



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

DRI, CNC, CNL, MNDCT, ERP, RP, PSF, LRE, AAT, LAT, OLC, FFT

### 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 One Month Notice to End Tenancy for Cause (the "One Month Notice"), pursuant to section 47;
- cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice"), pursuant to section 49;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67;
- an Order for emergency repairs, pursuant to section 33;
- an Order that the landlord's right to enter be suspended or restricted, pursuant to section 70;
- authorization to change the locks, pursuant to section 31;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62;
- an Order for regular repairs, pursuant to section 32;
- an Order to provide services or facilities required by the tenancy agreement or law, pursuant to section 65;
- disputation of a rent increase from the landlord, pursuant to section 42 and 43 of the *Act*;
- an Order to Allow Access for the Tenant or their guests, pursuant to sections 30 and 70; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

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

- an Order of Possession for Landlord's Use of Property, pursuant to sections 49 and 55;
- an Order of Possession for Cause, pursuant to sections 47 and 55; and
- authorization to recover the filing fee for this application from the tenant, 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 the landlord was served the notice of dispute resolution package by registered mail sometime in September 2018. The landlord's representative (the "landlord") confirmed receipt of the dispute resolution package sometime in September 2018 but did not know on what date. I find that the landlord was served with this package in September 2018 in accordance with section 89 of the *Act*.

After one hour and 16 minutes of hearing time I had heard evidence from both parties on the Two Month Notice; however, I determined that since we had not yet heard all the evidence regarding the One Month Notice, we would adjourn the hearing to be reconvened at a future date if the Two Month Notice was found to be of no force or effect. I informed both parties that I would draft a decision on the Two Month Notice and that I would only adjourn this hearing if the tenancy did not end pursuant to the Two Month Notice.

#### Preliminary Issue- Severance

Residential Tenancy Branch (RTB) Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claims regarding the One Month Notice and the Two Month Notice and the continuation of this tenancy are not sufficiently related to any of the tenant's other claims to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the Notices to End Tenancy.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the Notices to End Tenancy. I exercise my discretion to dismiss all of the tenant's claims with leave to reapply except cancellation of the notices to end tenancy and recovery of the filing fee for this application.

#### Preliminary Issue- Landlord's Evidence

The landlord testified that his mother attempted to serve the tenant with the landlord's evidence package in person on October 16, 2018 but that the tenant would not accept the package. The landlord testified that the landlord's evidence package was then posted on the tenant's door later in the day on October 16, 2018. The landlord entered into evidence photographs of the landlord's evidence package and accompanying letter taped to the tenant's door.

The tenant testified that on October 16, 2018 a pharmacist gave her incorrect medication, which made her feel extremely sleepy and unwell. The tenant testified that she fell asleep on the patio outside the subject rental property and that her boyfriend carried her inside when he arrived at the subject rental property.

The tenant testified that after she went inside she heard a pounding on the door and saw that the landlord and three to four girls were trying to break down the door to beat her up. The tenant testified that she did not open the door and never received the landlord's evidence package. The tenant's boyfriend testified that he saw four girls outside the tenant's rental property but that he did not notice the landlord's evidence package.

The landlord denied that the tenant's version of events occurred. The landlord testified the tenant resides in the lower suite of a house and that he and his family reside in the upper suite. The landlord testified that he would have preferred to send the tenant the evidence via registered mail but the mail always comes to his door, not the tenant's door, so he posted the evidence on the tenant's door and documented this occurrence with photographs. The landlord testified that the tenant was only claiming that she did not receive the landlord's evidence package to delay the proceedings.

Given the conflicting testimony, whether or not the landlord's evidence package was served hinges on a determination of credibility. A useful guide in that regard, and one of

the most frequently used in cases such as this, is found in *Faryna v. Chorny* (1952), 2 D.L.R. 354 (B.C.C.A.), which states at pages 357-358:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances.

In this case, the tenant testified that she had taken incorrect medication which affected her level of consciousness. I find that the tenant's testimony of the events of October 16, 2018 are not reliable. While the tenant's testimony was corroborated by her boyfriend, I find that the landlord's testimony as to the events of October 16, 2018 was more reasonable in the circumstances. I therefore accept the landlord's version of facts over of that of the tenant and her boyfriend.

Based on the landlord's testimony and the photograph's entered into evidence, I find that the landlord posted the landlord's evidence package on the tenant's door on October 16, 2018. I find that the tenant was deemed served with the landlord's evidence package on October 19, 2018, in accordance with section 88 of the *Act*. I admit the landlord's evidence package into evidence.

#### Issue(s) to be Decided

1. Is the tenant entitled to cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47 of the *Act*?
2. Is the tenant entitled to cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property, pursuant to section 49 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. Is the landlord entitled to an Order of Possession for Landlord's Use of Property, pursuant to sections 49 and 55 of the *Act*?
5. Is the landlord entitled to an Order of Possession for Cause, pursuant to sections 47 and 55 of the *Act*?

6. Is the landlord entitled to recover the filing fee for this application from the tenant, pursuant to section 72 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 that this tenancy began on May 20, 2017 and is currently ongoing.

The landlord testified that on August 28, 2018 a Two Month Notice with an effective date of October 31, 2018 was posted on the tenant's door. The tenant confirmed receipt of the Two Month Notice on August 28, 2018. The tenant filed to dispute the Two Month Notice on September 14, 2018. The tenant entered the Two Month Notice into evidence.

The landlord testified that he and his wife have recently had their first child and that many of his relatives from out of the country have moved in with them or are visiting for large periods of time in order to spend time with the baby. The landlord testified that there are seven family members currently living in the upper suite and that he wants to use the tenant's suite to set up a play area for his child and for his mother to live in. The landlord entered into evidence the photograph page of the passports of the seven people currently living in the upper suite.

The tenant testified that she thought the landlord was acting in bad faith because one to two days prior to receiving the Two Month Notice, she spoke to the landlord about renewing her lease and having her boyfriend move in and the landlord was agreeable. The landlord testified that a conversation about a lease renewal did not happen.

### Analysis

Based on the testimony of both parties and the evidence provided, I find that service of the Two Month Notice was effected on the tenant on August 28, 2018, in accordance

with section 88 of the *Act*. Upon review of the Two Month Notice, I find that it meets the form and content requirements of section 52 of the *Act*.

Section 49(5) and section 49(6) state that if a tenant who has received a Two Month Notice does not make an application for dispute resolution within 15 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 Two Month Notice within 15 days of receiving it. The tenant had 15 days from the receipt of the Two Month Notice to file with the RTB to dispute the Two Month Notice. 15 days from August 28, 2018, when the tenant received the Two Month Notice, was September 12, 2018. The tenant filed to dispute the Two Month Notice on September 14, 2018.

I find that, pursuant to section 49 of the *Act*, the tenant's failure to file to dispute the Two Month Notice within 15 days of receiving the Two 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 October 31, 2018. I find that the landlord is entitled to an Order of Possession effective October 31, 2018. 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 by October 31, 2018, the landlord may enforce this Order in the Supreme Court of British Columbia.

I note that as this tenancy is ending pursuant to section 49 of the *Act*, the tenant remains entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement, pursuant to section 51 of the *Act*.

As the landlord was successful in his application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72.

### Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective at **1:00 p.m. on October 31, 2018**, which should 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.

As this tenancy will end on October 31, 2018, pursuant to the Two Month Notice, I decline to adjourn this hearing to continue hearing evidence on the One Month Notice.

I issue a Monetary Order to the landlord in the amount of \$100.00.

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 29, 2018

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Residential Tenancy Branch