



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      AS, CNC, FFT

### Introduction

On August 3, 2018, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”), seeking an Order to Allow an Assignment or Sublet pursuant to Section 65 of the *Act*, and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

The Tenant and Landlord both attended the hearing. All in attendance provided a solemn affirmation.

The Tenant advised that she served the Landlord with the Notice of Hearing package and evidence by registered mail on August 10, 2018 and the Landlord confirmed that he received this. Based on this undisputed testimony, in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord has been served with the Notice of Hearing and evidence.

The Landlord stated that he posted his evidence to the Tenant’s door on September 10, 2018. The Tenant advised that she received this evidence on September 13, 2018. As such, I am satisfied that the evidence has been satisfactorily served on the Tenant in accordance with Rule 3.15 of the Rules of Procedure, and it was considered when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

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

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to an Order to allow an assignment or sublet?
- Is the Tenant entitled to recover the filing fee?

#### Background and Evidence

All parties agreed that the tenancy started on September 1, 2016 and that rent is currently \$1,300.00 per month, due on the first day of each month. A security deposit of \$575.00 and a pet damage deposit of \$200.00 were also paid.

All parties agreed that the Notice was served to the Tenant by being posted on her door on July 31, 2018 and the Tenant confirmed that she received the Notice on August 1, 2018. The reasons the Landlord served the Notice are because the "Tenant or a person permitted on the property by the tenant has: significantly interfered with or unreasonably disturbed another occupant or the landlord, seriously jeopardized the health or safety or lawful right of another occupant or the landlord, put the landlord's property at significant risk." As well, the "Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to: adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant, jeopardize a lawful right or interest of another occupant or the landlord." Finally, the Landlord also checked off that the "Tenant has assigned or sublet the rental unit/site without landlord's written consent."

The parties provided testimony with respect to the reasons on the Notice; however, the topic of a settlement was brought up by the parties.

### Settlement Agreement

The possibility of a settlement was raised, pursuant to Section 63(1) of the *Act*, which allows an arbitrator to assist the parties to settle the dispute. I explained to the parties that settlement discussions are voluntary, that if they chose not to discuss settlement I would make a final and binding decision on the matter, and that if they chose to discuss settlement and did not come to an agreement, that I would make a final and binding decision on the matter.

I advised the parties that if they did come to an agreement, I would write out this agreement in my written decision and make any necessary orders. I also explained that the written decision would become a final and legally binding agreement. The parties did not have questions about discussing a settlement when asked.

The parties engaged in a discussion on what would be an amenable settlement for both parties. The Landlord and the Tenant agreed as follows:

1. The Notice of July 31, 2018 is cancelled and of no force or effect.
2. The Tenant and Landlord agreed that the Tenant will have possession of the rental unit but must vacate the rental unit by **September 30, 2018 at midnight**.
3. The parties agreed that fulfilment of these conditions would amount to full and complete satisfaction of this Application.

This agreement is fully binding on the parties and is in full and final satisfaction of this dispute.

If condition two is not satisfactorily complied with, the Landlord is granted an Order of Possession effective at **midnight on September 30, 2018 after service of this Order** on the Tenant.

This settlement agreement was reached in accordance with Section 63 of the *Act*. The parties confirmed at the end of the hearing that this agreement was made on a voluntary basis and that the parties understood the binding nature of this full and final settlement of these matters.

As the Tenant was unsuccessful in this application, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I have recorded the terms of settlement in this decision and in recognition of the settlement agreement, based on the above, I hereby order that the One Month Notice to End Tenancy for Cause of July 31, 2018 to be cancelled and of no force or effect.

In addition, in support of the settlement described above and with agreement of both parties, I grant the Landlord a conditional Order of Possession, to serve and enforce upon the Tenant if necessary, effective at **midnight on September 30, 2018**. This Order must be served on the Tenant. If the Tenant fails to comply with this Order, the Landlord may file the Order with the Supreme Court of British Columbia and be 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: September 26, 2018

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Residential Tenancy Branch