



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **CNC MT**

### Introduction

This hearing dealt with an application by the tenant under the Residential Tenancy Act (the *Act*) for the following:

- Cancellation of One Month Notice to End Tenancy for Cause (“One Month Notice”) under section 47 of the *Act*;
- A request for more time to cancel the One Month Notice under section 66 of the *Act*;
- Recovery of the filing fees to this application from the landlord pursuant to section 72 of the *Act*.

The landlord appeared by its agents, PS and LC (“the landlord”). The landlord provided affirmed testimony. The landlord was given the opportunity to make submissions as well as present oral and written evidence.

The tenant did not appear at the hearing. I kept the teleconference line open from the time the hearing was scheduled for twenty minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct participant code for the tenant had been provided.

The landlord acknowledged being served by the tenant with the Notice of Hearing and evidentiary package. No issue of service was raised. I find the landlord was served as required under section 89.

### Issue(s) to be Decided

- Is the tenant entitled to cancellation of the One Month Notice under section 47 of the *Act*;
- Is the tenant entitled to more time to cancel the One Month Notice under section 66 of the *Act*;

- If the tenant is not successful in cancelling the One Month Notice, is the landlord entitled to an order of possession under section 55 of the *Act*; and
- Is the tenant entitled to recovery of the filing fees to this application from the landlord pursuant to section 72.

### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here. The principal aspect of the claims and my findings are set out below.

The landlord provided testimony that the tenancy agreement between the parties began on October 1, 2013. Monthly rent is \$806.00 payable on the first of each month. The tenant provided a security deposit at the beginning of the tenancy in the amount of \$375.00 which is held by the landlord.

The landlord testified that on July 25, 2018, the tenant's adult son, who is living in the unit, attacked the occupant of another unit in the rental complex with a rock and the tenant's son was removed by the RCMP. Three signed witness statements were submitted by the landlord.

The landlord testified to personal service of the One Month Notice upon the tenant on July 27, 2018. The grounds set out in the One Month Notice were as follows:

- *The 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.*

The One Month Notice provided that the tenant must vacate the unit by August 31, 2018 unless the tenant filed an application for dispute resolution within ten days after receiving it, that is, by August 6, 2018. A copy of the One Month Notice was submitted as evidence.

The tenant filed an application for dispute resolution on August 14, 2018, outside the ten-day period in the Two Month Notice.

The landlord testified the tenant is still in occupation of the unit.

### Analysis

Based on the landlord's uncontradicted testimony and a review of the One Month Notice, I find the Notice complied with section 52 of the Act.

Section 7.3 of the Rules of Procedure provide:

#### *7.3 Consequences of not attending the hearing*

*If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.*

Accordingly, the hearing was conducted in the absence of the applicant.

Section 47(4) of the Act provides that a tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant received the notice.

As no evidence was submitted in support of the tenant's application for extension of a time limit to file an application for dispute resolution to cancel the One Month Notice under section 66, the tenant's claim in this regard is dismissed without leave to reapply.

I find the tenant did not make an application within 10 days of the date the Notice was received, that is, by August 6, 2018.

Section 47 of the Act states as follows:

*(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant*  
*(a) is **conclusively presumed** to have accepted that the tenancy ends on the effective date of the notice, and*  
*(b) must vacate the rental unit by that date.*

Pursuant to section 47(5)(a), I find the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, that is, August 31, 2018.

I accordingly dismiss the tenant's application to cancel the One Month Notice without leave to reapply.

Section 55(1) of the *Act* reads as follows:

**55** (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director **must** grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

*(a) the landlord's notice to end tenancy complies with section 52{form and content of notice to end tenancy}, and*

*(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

Based on my decision to dismiss the tenant's application for dispute resolution and my finding that the landlord's One Month Notice complies with section 52 of the *Act*, I find that this tenancy ended on the effective date in the Notice of August 31, 2018.

As the tenant is still in occupation of the unit, the landlord is therefore entitled to an order of possession effective two days after service.

### Conclusion

I grant an order of possession to the landlord effective two days after service of this order on the tenant. Should the tenant fail to comply with this order, this order may be 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 03, 2018

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Residential Tenancy Branch