



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding YORK DEVELOPMENTS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

On August 20, 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”).

The Tenant attended the hearing and Y.B. and E.M. attended the hearing as agents for the Landlord. All in attendance provided a solemn affirmation.

At the outset of the hearing, the Tenant requested an adjournment as she was not able to obtain enough letters as evidence for this file. The Landlord’s agent was not prepared to acknowledge the Tenant’s request. Rule 7.9 of the Rules of Procedure provides the applicable criteria for the granting of an adjournment. As this hearing pertains to a notice to end the tenancy, I find that adjourning the hearing would be prejudicial to the Landlord. As such, I did not allow the Tenant’s request for an adjournment.

The Tenant advised that she served the Landlord with the Notice of Hearing package by registered mail and the Landlord’s agent 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.

The Tenant advised that she served her evidence to the Landlord by registered mail on September 30, 2018 to two separate addresses for the Landlord. The Landlord’s agent advised that he had eventually received it. However, I am not satisfied that the evidence has been satisfactorily served on the Landlord as it was late and not in accordance with Rule 3.14 of the Rules of Procedure. This evidence was not considered when rendering this decision.

The Landlord's agent stated that he served their evidence to the Tenant by registered mail on August 29, 2018 and she confirmed that she received it. 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?

#### Background and Evidence

All parties agreed that the tenancy started on September 1, 1995 and that rent is currently \$1,204.00 per month, due on the first day of each month. A security deposit of \$362.00 was also paid.

All parties agreed that the Notice was served to the Tenant by registered mail on August 10, 2018 and the Tenant confirmed that she received the Notice. The reason the Landlord served the Notice is because of a "Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so." The Notice indicated that the effective end date is September 30, 2018.

The parties provided testimony with respect to the reason 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 August 10, 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 **January 31, 2019 at 1:00 PM**.
3. Rent will be paid in full for November and December 2018, and January 2019.
4. The Landlord will not pursue any more issues with respect to the tape on the door for the remainder of the tenancy.
5. 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 **January 31, 2019 at 1:00 PM 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.

### 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 August 10, 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 **January 31, 2019 at 1:00 PM**. 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: October 5, 2018

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Residential Tenancy Branch