



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ASCENT MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, OLC, FFT

### Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated December 13, 2018 ("1 Month Notice"), pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord's two agents, "landlord MC" and "landlord AD," and the tenant 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 landlord's two agents are authorized representatives of the landlord company named in this application (collectively "landlord"). This hearing lasted approximately 32 minutes.

Landlord AD confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's written evidence package.

The tenant confirmed receipt of the landlord's 1 Month Notice on December 14, 2018. The notice indicates an effective move-out date of January 31, 2019. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the landlord's 1 Month Notice on December 14, 2018.

### Preliminary Issue – Adjournment Request by Tenant

At the outset of the hearing, the tenant requested an adjournment. He said that he only received the landlord's written evidence package on January 20, 2019 and it was late because it

was received less than 14 days prior to this hearing. He claimed that he did not have a chance to review the evidence with his lawyer because his lawyer was busy in a trial. He claimed that he also wanted to wait for police reports to come in locally and from Ontario regarding the 1 Month Notice. He stated that he did not order the police reports until January 10, 2019, despite receiving the 1 Month Notice on December 14, 2018, because that is when he said his lawyer ordered the reports. He explained that it takes time to receive these police reports.

Landlord MC opposed the tenant's adjournment request. She stated that the complaints made against the tenant were made on different dates and did not relate to the issues in the police reports regarding the tenant's neighbours' noise. She explained that landlord AD continued to receive complaints against the tenant to this date, and other tenants were threatening to move out of their rental units due to the tenant's behaviour. She claimed that the landlord wanted an order of possession against the tenant at this hearing.

During the hearing, I informed both parties that I was not granting an adjournment of the tenant's application. I did so after taking into consideration the criteria established in Rule 7.9 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("Rules"), which includes the following provisions:

*Without restricting the authority of the arbitrator to consider the other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:*

- *the oral or written submissions of the parties;*
- *the likelihood of the adjournment resulting in a resolution;*
- *the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and*
- *whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
- *the possible prejudice to each party.*

I notified both parties that the landlord's evidence was received by the tenant in a timely manner, as the respondent's evidence is due at least 7 days before the hearing, not 14 days as claimed by the tenant, as per Rule 3.15 of the RTB *Rules*.

I find that the tenant filed this application on his own accord, as no one required him to do so. At the time of that filing on December 18, 2018, the tenant was immediately notified of this hearing date on January 29, 2019. The tenant received the 1 Month Notice on December 14, 2018, prior to filing this application. The tenant had over one month to prepare for this hearing and to gather any relevant evidence, including police reports. The tenant also had an opportunity to speak to his lawyer about the landlord's evidence and to order the police reports earlier than January 10, 2019. The tenant is not required to retain a lawyer for this proceeding. The fact that the tenant's lawyer is busy or the tenant did not review the landlord's evidence with

his lawyer, that he received according to the deadlines in the *Rules*, are the tenant's own choice.

I also find that this is an urgent order of possession issue which must be dealt with expeditiously. I find that delaying this proceeding could prejudice the landlord, who continues to receive complaints about the tenant.

After I notified both parties about my decision, they chose to settle the application of their own accord.

### Settlement Terms

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision and orders. During the hearing, the parties discussed the issues between them, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding settlement of all issues currently under dispute at this time:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on February 28, 2019, by which time the tenant and any other occupants will have vacated the rental unit;
2. The landlord's 1 Month Notice, dated December 13, 2018, is cancelled and of no force or effect;
3. Both parties agreed to abide by section 29 of the *Act* prior to the landlord's entry into the tenant's rental unit; the landlord agreed to provide at least 24 hours' written notice by way of handing it to the tenant in person or posting it to the tenant's rental unit door, and the tenant agreed to provide access once proper written notice is provided by the landlord;
4. The tenant agreed that this settlement agreement constitutes a final and binding resolution of his application at this hearing, except for the application filing fee.

These particulars comprise the full and final settlement of all aspects of this dispute for both parties, except for the application filing fee. Both parties affirmed at the hearing that they understood and agreed to the above terms, free of any duress or coercion. Both parties affirmed that they understood and agreed that the above terms are legal, final, binding and enforceable, which settle all aspects of this dispute, except for the application filing fee.

Both parties asked me to make a decision regarding the tenant's application filing fee, since they were unable to settle this matter. The filing fee is a discretionary award usually given to a successful party after a full hearing on its merits. Since I was not required to make a decision

regarding the tenant's application and the parties settled this matter between themselves, I decline to award the \$100.0 application filing fee to the tenant.

Conclusion

To give effect to the settlement reached between the parties and as advised to both parties during the hearing, I issue the attached Order of Possession to be used by the landlord **only** if the tenant and any other occupants fail to vacate the rental premises by 1:00 p.m. on February 28, 2019. The tenant must be served with this Order in the event that the tenant and any other occupants fail to vacate the rental premises by 1:00 p.m. on February 28, 2019. 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.

The landlord's 1 Month Notice, dated December 13, 2018, is cancelled and of no force or effect.

I order both parties to abide by section 29 of the *Act*.

The tenant's application to recover the \$100.00 filing fee is dismissed without leave to reapply.

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: January 29, 2019

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Residential Tenancy Branch