



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC

### Introduction

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

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (One Month Notice), pursuant to section 47 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Advocate D.D. attended to assist the tenants. Landlord's agent G.M. (herein referred to as "the landlord") attended on behalf of the apartment building owner.

As both parties were present, service of documents for this hearing was confirmed. The landlord confirmed he was in receipt of the tenants' Notice of Dispute Resolution Proceeding and evidence. The tenants testified that they were in receipt of the landlord's evidence. Based on the undisputed testimonies of the parties, I find that both parties were sufficiently served in accordance with the *Act*.

### Procedural Matters

I explained to the parties 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 tenant's Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Further to this, the parties were advised that the standard of proof in a dispute resolution hearing is on a balance of probabilities. Usually the onus to prove the case is on the person making the claim. However, in situations such as in the current matter, where a tenant has applied to cancel a landlord's Notice to End Tenancy, the onus to prove the reasons for ending the tenancy transfers to the landlord as they issued the Notice and are seeking to end the tenancy.

### Issue(s) to be Decided

Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession on the basis of the One Month Notice?

### Analysis

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 or an order. 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 the issue currently under dispute at this time:

1. This tenancy will end at 1:00 p.m. on June 1, 2019, by which time the tenants and any other occupants will have vacated the rental unit.
2. Both parties agreed that the terms of this settlement as outlined above constitute a final and binding resolution of the tenants' application for dispute resolution filed on January 24, 2019, and the landlord's One Month Notice dated January 15, 2019. As such, the tenants' application is dismissed in its entirety, and the landlord's One Month Notice is cancelled and is of no force or effect.
3. The parties agreed to the terms of this settlement free of any duress or coercion.

**The parties are still bound by all of the rights, responsibilities, terms, conditions and any statutory compensation provisions of the tenancy agreement, the *Act*, and the associated regulations.**

### Conclusion

To give effect to the settlement reached between the parties and as advised to both parties during the hearing, I issue to the landlord the attached Order of Possession to be served on the tenants by the landlord **only** if the tenants fail to vacate the rental unit **by 1:00 p.m. on June 1, 2019**. Should the tenants 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 One Month Notice dated January 15, 2019 is cancelled and is of no force or effect. The tenants' application in its entirety 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: March 13, 2019

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Residential Tenancy Branch