



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC FFT

### Introduction

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

- cancellation of the landlords' One Month Notice to End Tenancy for Cause (One Month Notice) pursuant to section 47 of the *Act*; and
- the recovery of the filing fee for this application from the landlords pursuant to section 72 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.

Landlord G.S. attended, accompanied by his legal counsel R.H. Landlord G.S. confirmed that he was attending on behalf of both landlords and that he was authorized to speak and act on behalf of both landlords.

Tenant R.P. attended and confirmed that he was attending on behalf of both tenants and that he was authorized to speak and act on behalf of both tenants.

As both parties were present, service of documents was confirmed. The landlord confirmed receipt of the tenants' Notice of Dispute Resolution Proceeding package and the tenants' evidence, sent by registered mail. The tenant confirmed receipt of the landlords' evidence, sent by registered mail.

Based on the undisputed testimonies of the parties, I find that the landlords were served with the notice of this hearing, and that the evidence of both parties was served in accordance with the *Act*.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the Rules of Procedure and to which I was referred, only evidence relevant to the issues of this application are considered in my decision.

Preliminary Issue – Tenants’ Application Not Filed Within Time Limits of the Act

At the outset of the hearing, the landlords’ counsel asserted that the tenants had failed to file their Application for Dispute Resolution to dispute the landlord’s One Month Notice dated May 22, 2019 within the 10-day time limit provided by section 47(4) of the *Act*.

In the tenants’ Application for Dispute Resolution which was filed on June 5, 2019, the tenants stated that they received the One Month Notice on May 24, 2019, having found it in the flower bed. This was confirmed by tenant R.P.’s testimony at the hearing.

The landlord and the landlord’s witness also confirmed service of the One Month Notice on May 24, 2019, however, the landlord and the witness testified that the notice was in an envelope taped to the rental unit front door and referenced submitted photographic evidence consisting of three pictures of the rental unit door with the envelope taped to it with gray tape.

Section 47(4) of the *Act* states:

A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

Tenant R.P. explained that he had been in contact with the Residential Tenancy Branch staff and believed that he had followed their instructions. He also explained that he believed the 10 days specified in the *Act* excluded weekends and only included business days. I explained to the parties that the interpretation of days in the *Act* does not take into account weekends, business days or holidays, except for situations when the last day for submitting an application falls on a day that the Residential Tenancy Branch is not open, then the time limit would be extended to the next business day. This is clarified in the definitions section of the Residential Tenancy Branch Rules of Procedure, as follows, in part:

#### Days

- a) If the time for doing an act falls or expires on a holiday, the time is extended to the next day that is not a holiday.
- b) If the time for doing an act in a business office falls or expires on a day when the office is not open during regular business hours, the time is extended to the next day that the office is open.
- c) In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days, weeks, months or years, the first and last days must be excluded.
- d) In the calculation of time not referred to in subsection (c), the first day must be excluded and the last day included.

In this case, I find that the tenants received the One Month Notice on Friday, May 24, 2019 and filed an Application for Dispute Resolution on Wednesday, June 5, 2019. In accordance with the definition of "Days" provided in section (d) above, this means that the tenants filed their Application for Dispute Resolution 12 days after receiving the notice.

Section 47(5) of the Act states:

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.

Accordingly, as the tenants did not make an application for dispute resolution in accordance with section 47(4) of the *Act*, I find that the tenants are conclusively presumed to have accepted the tenancy ended on the effective date of the One Month Notice, June 30, 2019, in accordance with section 47(5) of the *Act*.

In light of the above, I find the tenants' application for dispute resolution is dismissed, without leave to reapply.

When a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the *Act*, section 55(1) of the *Act* requires that I grant an order of possession to a landlord, as follows:

If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (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.

Section 52 of the *Act* provides that:

In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
- (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
- (e) when given by a landlord, be in the approved form.

I have examined the One Month Notice submitted into evidence by the tenants and find that the notice complies with section 52 of the *Act*, as it is signed and dated by the landlord, states the address of the rental unit, provides an effective date of the notice, sets out the grounds for ending the tenancy, and is on the approved form (#RTB-33).

Therefore, in accordance with section 55(1) of the *Act*, I grant the landlords an Order of Possession. The landlords' submitted documentary evidence confirmed that the tenants had made payment for July 2019 for "use and occupancy" of the rental unit pending the outcome of this hearing. Therefore, pursuant to my authority under section 55(3) of the *Act*, the Order of Possession will be effective at 1:00 p.m. on July 31, 2019. The landlords must serve the tenants with the attached Order as soon as possible.

As the tenants were not successful in their application, they must bear the cost of their filing fee.

Issue(s) to be Decided

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

Are the tenants entitled to recover the cost of the filing fee for this application from the landlords?

Conclusion

The tenants' Application for Dispute Resolution is dismissed.

I grant an Order of Possession to the landlords effective 1:00 p.m. on July 31, 2019.

The landlords are provided with this Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

As the tenants were unsuccessful in their application, they must bear the cost of their filing fee.

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: July 19, 2019

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Residential Tenancy Branch