



# 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 an order to cancel a One Month Notice to End Tenancy for Cause ("Notice") pursuant to section 47.

The landlord attended the hearing and the tenant attended the hearing represented by a legal advocate, MB ("tenant"). As both parties were in attendance, service of documents was confirmed. The tenant acknowledges receipt of the landlord's evidence that was personally served to him on July 22, 2019. I find the landlord's evidence was served in accordance with section 88 of the Act on that date.

### Preliminary Issue – late evidence

The landlord confirmed receipt of the tenant's application for dispute resolution proceedings but indicates two pieces of evidence were provided to him yesterday. The first piece of evidence was already provided in the landlord's evidence package; the second piece of evidence was a letter obtained from the city on July 30<sup>th</sup>. After giving each of the parties an opportunity to be heard on the question of accepting late evidence, I considered whether the landlord would be unreasonably prejudiced if I were to accept it. I determined that I would not accept the document as evidence since I was satisfied the tenant could have obtained within the time limits set out in rule 3.14 of the Rules of Procedure, however I allowed the tenant to read the contents of the letter into the record.

### Preliminary Issue – landlord's name

The landlord's given name was misspelled on the tenant's application for dispute resolution. In accordance with rules 4.2 and 6.1 of the Residential Tenancy Branch

Rules of Procedure, I amended the landlord's given name. It is reflected on the cover page of this decision.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy for Cause be upheld or cancelled?

Background and Evidence

The landlord provided the following testimony. The tenancy involves a room in a single-family home that is occupied by multiple tenants as a rooming house with eight bedrooms and separate keyed locks. On February 26, 2019, the landlord received an order from the city regarding the rooming house, indicating there were unapproved alterations made to it, including an unauthorized suite being installed on the lower floor. The landlord testified this lower suite was further subdivided into two separate units, the tenant/applicant living in one of these units. The tenant on the other side of the lower unit has already vacated that unit.

The city's order specifies the landlord must:

- Remove the keyed locks on all bedroom doors; and
- Cease use of this building as a rooming house.

The landlord testified that he completed and signed a One Month Notice to End Tenancy for Cause ("Notice") on May 30, 2019 and he personally served it on the tenant the same day. The effective date of the Notice was June 30, 2019 and the reason for the Notice provided was:

- Rental unit/site must be vacated to comply with a government order.

The landlord provided a copy of the Notice as evidence in these proceedings.

The tenant testified the Notice was not dated or served on May 30<sup>th</sup> but was dated and served on May 31<sup>st</sup>. The tenant testified he remembers it was served on a weekend because he didn't have the opportunity to seek advocacy on it immediately; he had to wait until the following Monday. The tenant did not provide a copy of the Notice in his evidence.

Analysis

Residential Tenancy Branch Rules of Procedure, Rule 2.5 indicates the documents that must be submitted with an Application for Dispute Resolution (reprinted below)

To the extent possible, the applicant should submit the following documents at the same time as the application is submitted:

- a detailed calculation of any monetary claim being made;
- **a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy;** and
- copies of all other documentary and digital evidence to be relied on in the proceeding, subject to Rule 3.17 [*Consideration of new and relevant evidence*].

When submitting applications using the Online Application for Dispute Resolution, the applicant must upload the required documents with the application or submit them to the Residential Tenancy Branch directly or through a Service BC Office within three days of submitting the Online Application for Dispute Resolution.  
[emphasis added]

While the tenant submits the landlord signed and served the Notice on May 31<sup>st</sup>, he did not provide a copy of it as evidence. The landlord provided a copy of the Notice which corroborates his testimony that he signed it and personally served it on the tenant on May 30<sup>th</sup>. Though both of the parties' accounts of when the Notice was served are plausible, I must accept the landlord's account that it was served on May 30<sup>th</sup> as he has provided the written evidence to corroborate it. I find the Notice was served on that date in accordance with section 88 of the Act.

Sections 47(4) and (5) of the Act state:

(4) 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.**  
[emphasis added]

(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.

The tenant filed for dispute resolution by online application on June 11, 2019, twelve days after receiving the Notice in person. Although he had the opportunity to do so, he

did not file an application to dispute the Notice within 10 days of receiving the Notice and is therefore conclusively presumed to have accepted the tenancy ended on June 30, 2019, the effective date of the Notice and must move out of the unit.

Section 47(3) of the Act states a Notice under this section must comply with section 52 [*form and content of notice to end tenancy*]. I have examined the landlord's Notice and find that it complies with the form and content provisions of section 52 of the Act, which states that the Notice 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, and (e) when given by a landlord, be in the approved form. I uphold the landlord's Notice to End Tenancy.

As the effective date of the Notice has already passed, I find the landlord is entitled to an Order of Possession effective two days after service upon the tenant pursuant to section 55 of the Act. I have considered the tenant's request to allow the tenant additional time to find alternate living arrangements, however I find to do so would impinge upon the landlord's rights as the property owner.

In the event the landlord has collected rent for the month of August, that rent money is to be returned to the tenant in accordance with section 65(1)(c) of the Act.

### Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. 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.

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: August 01, 2019

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Residential Tenancy Branch