



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SOMERSET MANOR and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: CNC

### Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act"). The tenant applied to cancel two 1 Month Notices to End Tenancy for Cause ("1 Month Notice"). The first 1 Month Notice was dated June 18, 2019 ("1 Month Notice A") and the second 1 Month Notice was dated July 12, 2019 ("1 Month Notice B").

The tenant, two witnesses for the tenant who did not testify, and two landlord agents PB and JB ("agents") attended the teleconference hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

Agent PB ("agent") confirmed that they were served with the tenant's application and their documentary evidence and had the opportunity to review that evidence prior to the hearing. The agent also confirmed that the landlord did not submit any documentary evidence in response to the tenant's application. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Preliminary and Procedural Matters

The parties confirmed that they currently do not have access to email and would prefer the decision to be sent by regular mail. The parties confirmed their understanding that

the decision would be sent by regular mail to the parties. In addition, any order(s) will be mailed to the appropriate party for service on the other party.

As the 1 Month Notice indicates "Somerset Manor" as the landlord, I amend the tenant's application to include the correct landlord name pursuant to section 64(3) of the *Act*. Accordingly, I have also amended PB and JB to agents of the landlord.

### Issue to be Decided

- Should either of the 1 Month Notices be cancelled?

### Background and Evidence

Regarding 1 Month Notice A, there is no dispute that the landlord verbally cancelled 1 Month Notice A. As a result, I find that 1 Month Notice A is of no force or effect and will not be considered further in this decision as a result.

Regarding 1 Month Notice B, the tenant testified that she was served with 1 Month Notice B on July 12, 2019. The tenant disputed 1 Month Notice B on July 26, 2019. The parties confirmed that the tenant has paid money for use and occupancy of the rental unit for the month of September 2019.

The parties were advised that I did not need to hear any testimony regarding the cause listed on 1 Month Notice B as the tenant failed to dispute 1 Month Notice B within the 10 day required timeline. While the tenant attempted to change her testimony after I provided my decision verbally during the hearing, the tenant was advised that she was affirmed at the start of the hearing and that attempts to change her testimony after the fact to coincide with the 10 day timeline would not be permitted.

The effective vacancy date listed on 1 Month Notice B is August 30, 2019, which has passed.

### Analysis

Based on the documentary evidence, testimony and on the balance of probabilities, I find the following.

I have reviewed the 1 Month Notice B and find that it complies with section 52 of the *Act*. I also find that as the tenant confirmed that they received 1 Month Notice B on July 12, 2019. The tenant eventually applied to dispute 1 Month Notice B on July 26, 2019, which I find is beyond the 10 day timeline provided for under the *Act*. Section 47(4) and 47(5) of the *Act* states the following:

47 (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.**

(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.**

[Emphasis added]

Based on the above, I find that the tenant failed to dispute 1 Month Notice B by July 22, 2019, which was the deadline for disputing 1 Month Notice B. Therefore, pursuant to section 47(5) of the *Act* I find the tenant is conclusively presumed to have accepted that the tenancy ended on the effective vacancy date, which is listed as August 30, 2019. Therefore, I find the tenancy ended on August 30, 2019 and I dismiss the tenant's application as a result, without leave to reapply. I do not find it necessary to consider 1 Month Notice B further as a result.

I note that the tenant did not apply for more time to make an application to dispute a Notice to End Tenancy under the *Act*. Pursuant to section 55 of the *Act*, I grant the landlord an order of possession effective **September 30, 2019 at 1:00 p.m.** I have used this date as the parties agreed that money has been paid by the tenant for use and occupancy of the rental unit for September 2019.

### Conclusion

The tenant's application is dismissed without leave to reapply. The tenancy ended on August 30, 2019.

1 Month Notice B is upheld and is valid.

The landlord has been granted an order of possession effective September 30, 2019 at 1:00 p.m. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

This decision will be mailed to both parties as indicated above. The order of possession will only be mailed to the landlord for service on the tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: September 24, 2019

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Residential Tenancy Branch