



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC

### Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution wherein she sought an Order of Possession based on an undisputed 1 Month Notice to End Tenancy for Cause issued on January 13, 2020 (the "Notice").

The hearing of the Landlord's Application was scheduled for teleconference at 9:30 a.m. on April 27, 2020. Only the Landlord and her witness, P.V. called into the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 10:00 a.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord, her witness, and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlord's hearing package. The Landlord testified that she personally served the Tenant with notice of the hearing and the Landlord's Application. P.V. confirmed she witnessed the Landlord serve the Tenant. Based on this undisputed testimony, I am satisfied the Tenant was duly served with notice of the hearing and I proceeded with the hearing in his absence.

During the hearing the Landlord stated that she wished to withdraw the Notice.

*Residential Tenancy Branch Policy Guideline 11—Amendment and Withdrawal of Notices* provides that a landlord or tenant cannot unilaterally withdraw a Notice to End Tenancy. A Notice to End Tenancy can be waived, and a new or continuing tenancy created, only by the express or implied consent of both parties. I find the Tenant, by

continuing to remain in the rental unit and failing to attend the hearing, has impliedly consented to the withdrawal of the Notice and **I therefore permit the Landlord to withdraw the Notice.**

Although I have permitted the Landlord to withdraw the Notice, I note the following. The Notice was completed on a Residential Tenancy Branch form created in 2007 which did not include any details of the dispute. The Landlord confirmed that she only served the 2-page Notice on the Tenant and did not provide him with a covering letter.

Ending a tenancy is a significant request and may only be done in accordance with the *Residential Tenancy Act*. A landlord who seeks to end a tenancy for cause pursuant to section 47 of the *Act* bears the burden of proving the reasons for ending the tenancy. Section 47(3) provides that a 1 Month Notice must comply with section 52 of the *Act*.

Section 52 of the *Act* provides as follows:

**Form and content of notice to end tenancy**

**52** 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, and
- (e) when given by a landlord, be in the approved form.

The “approved form” as referenced in section 52(e) is #RTB-33 and which can be found online at:

<https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/forms/rtb33.pdf>

The current form, #RTB-33, includes a “Details of Cause” section which informs the Landlord that the Notice may be cancelled if details are not described. For clarity, I provide a screen shot of that section:

Often a landlord will serve a tenant with a covering letter setting out the reasons for issuing the Notice and will write “see attached” in the Details of Cause section. The Landlord confirmed that the only document served on the Tenant was the Notice; consequently, the Tenant was not provided with any details or information as to why the Landlord was seeking to end the tenancy, save and except for the general allegations which were checked off by the Landlord on the Notice.

A landlord seeking to end a tenancy for cause, is required to give the tenant details of the cause on the notice to end tenancy so that the tenant knows the reasons the landlord wishes to end their tenancy and is able to respond to the specific allegations. In this case the Landlord used an outdated form and therefore failed to provide any such details. Consequently, even in the event I had not found the Tenant consented to the withdrawal of the Notice, I would have found the Notice to be ineffective.

Dated: April 28, 2020