



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SURREY 108 DEVELOPMENTS  
LTD. and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      CNC, OPC, FFL

### Introduction

The tenant applied to cancel a One Month Notice to End Tenancy for Cause (the "Notice") pursuant to section 47 of the *Residential Tenancy Act* ("Act"). The landlord, by way of cross-application, seeks an order of possession based on the Notice. And, the landlord seeks compensation for the cost of the filing fee under section 72 of the Act.

Both parties, including a witness for the landlord, attended the hearing on January 28, 2021, which was held by teleconference.

Regarding the exchange and service of evidence, the tenant explained that, due to an honest error on his part, he failed to serve the landlord with his Notice of Dispute Resolution Proceeding package or any of his evidence. The landlord's agent remarked that they were totally unaware that the tenant had disputed the Notice.

### Preliminary Issue: Failure to Serve the Notice of Dispute Resolution Proceeding

As noted, the tenant failed to serve the Notice of Dispute Resolution Proceeding on the landlord. This is the basis on which I make the following findings and decision.

The Notice was issued by the landlord under various subsections of section 47 of the Act. The tenant received the Notice on October 28, 2020. A copy of the Notice was submitted into evidence and it was, I find, completed properly.

Section 47 of the Act provides various grounds for "cause" by which a tenancy may be brought to an end. Subsection 47(4) of the Act states that "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."

Sections 59(2) and 59(3) of the Act state the following in respect of what is required by an applicant when “making an application for dispute resolution” (my emphasis):

(2) An application for dispute resolution must

- (a) be in the applicable approved form,
- (b) include full particulars of the dispute that is to be the subject of the dispute resolution proceedings, and
- (c) be accompanied by the fee prescribed in the regulations.

(3) Except for an application referred to in subsection (6), **a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it**, or within a different period specified by the director.

While the tenant started his application for dispute resolution process on November 6, 2020, he did not complete the very important requirement of actually *serving* the respondent landlord with notice of the application (which is what is required when the Residential Tenancy Branch sends the applicant a Notice of Dispute Resolution Proceeding, which in this case was done on November 10, 2020).

Given that the tenant failed to comply with section 59(3) of the Act, I find that the tenant did not make an application to dispute the notice and therefore cannot be said to have disputed the Notice.

Section 47(5) of the Act states that

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.

Therefore, given my finding that the tenant did not dispute the Notice, it follows that the tenant was conclusively presumed to have accepted that the tenancy ended on November 30, 2020 and was required to vacate the rental unit.

Section 55(2)(b) of the Act authorizes me to issue an order of possession to a landlord where a notice to end tenancy has been given by the landlord and the tenant has not disputed the notice by making an application for dispute resolution. In this case, given that the tenant has not been found to have disputed the Notice, I consequently grant the landlord an order of possession of the rental unit.

Given the dire financial and mental health circumstances of the tenant, however, I issue an order of possession with an effective vacate date of February 28, 2021. With any luck, this will give the tenant adequate time to find a new place to live.

As the landlord was successful in its application, I grant their claim for \$100.00 for the application filing fee, pursuant to section 72 of the Act. A monetary order is issued to the landlord, along with the order of possession, in conjunction with this Decision.

### Conclusion

I dismiss the tenant's application, without leave to reapply.

I grant the landlord an order of possession, which must be served on the tenant no later than February 1, 2021, and which shall go into effect at 1:00 PM on February 28, 2021. This order may be enforced in the Supreme Court of British Columbia.

I grant the landlord a monetary order in the amount of \$100.00, which must be served on the tenant. If the tenant fails to pay the landlord the amount owed, the landlord may file and enforce the order in the Provincial Court of British Columbia.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: January 28, 2021

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Residential Tenancy Branch