



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HOMETIME REALTY  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      CNC

### Introduction

On February 22, 2021, the Tenant made an Application for Dispute Resolution seeking to cancel a One Month Notice to End Tenancy for Cause (the "Notice") pursuant to Section 47 of the *Residential Tenancy Act* (the "Act").

The Tenant attended the hearing. T.J. and S.H. attended the hearing as agents for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. However, during the hearing, the parties were reminded of the above instructions and the Tenant was specifically cautioned to refrain from interrupting as she had continuously interjected and had been disruptive.

All parties in attendance provided a solemn affirmation.

The Tenant advised that she served the Notice of Hearing package and some evidence to the Landlord on March 4, 2021 by registered mail, and S.H. confirmed that the Landlord received this package. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was sufficiently served the Notice of Hearing package and some evidence.

The Tenant advised that she also served some late evidence to the Landlord by regular mail on May 14, 2021. S.H. stated that the Landlord received this evidence on May 21, 2021 and that they were prepared to respond to this evidence. Despite this evidence being served late, and not in accordance with the timeframe requirements of Rule 3.14 of the Rule of Procedure, as the Landlord was prepared to proceed with this late

evidence, I have accepted all of the Tenant's evidence and I will consider it when rendering this Decision.

S.H. advised that the Tenant was served the Landlord's evidence on March 22, 2021 by registered mail (the registered mail tracking number is noted on the first page of this Decision). The tracking history indicated that this package was signed for on March 27, 2021; however, the Tenant claimed that she never received this evidence. Based on the evidence before me, I am satisfied that the Tenant more likely than not was sufficiently served the Landlord's evidence. As such, I have accepted all of the Landlord's evidence and I will consider it when rendering this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

#### Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on January 1, 2015, that rent was currently established at an amount of \$828.00 per month, and that it was due on the first day of each month. A security deposit of \$375.00 was also paid. A signed copy of the tenancy agreement was submitted as documentary evidence.

The Tenant advised that the other Applicant noted on this Application was also a tenant and that this person either signed a new tenancy agreement or amended the original tenancy agreement to add him on as a tenant. She did not know when he did this, and she did not have any documentary evidence to prove that this happened. The only tenancy agreement that she submitted as documentary evidence was the original agreement that listed her as the only Tenant. S.H. advised that there was no new tenancy agreement signed, nor was the original tenancy agreement amended to add any person, other than the Tenant, onto the tenancy agreement.

Based on these submissions, and without documentary evidence to the contrary, I am satisfied that there was not another tenant added to this tenancy agreement. As a result, I have amended the Style of Cause on this Decision to remove the second Applicant from this dispute.

All parties also agreed that the Notice was served to the Tenant on February 12, 2021 by hand. The reasons the Notice was served were due to the following:

- Tenant or a person permitted on the property by the tenant has:
  - Significantly interfered with or unreasonably disturbed another occupant or the Landlord;
  - Seriously jeopardized the health or safety or lawful right of another occupant or the Landlord; and/or
  - Put the landlord's property at significant risk.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

### Settlement Agreement

The possibility of a settlement was raised, pursuant to Section 56(1) of the *Act*, which allows an Arbitrator to assist the parties to settle the dispute. I explained to the parties that settlement discussions are voluntary, that if they chose not to discuss settlement I would make a final and binding Decision on the matter, and that if they chose to discuss settlement and did not come to an agreement, that I would make a final and binding Decision on the matter.

I advised the parties that if they did come to an agreement, I would write out this agreement in my written Decision and make any necessary Orders. I also explained that the written Decision would become a final and legally binding agreement. The parties did not have questions about discussing a settlement when asked.

The parties engaged in a discussion on what would be an amenable settlement for both parties. The Landlord and the Tenant agreed as follows:

1. The One Month Notice to End Tenancy for Cause of February 12, 2021 is cancelled and of no force or effect.
2. The Tenant remains in possession of the rental unit but must give up vacant possession of the rental unit on **July 1, 2021 at 1:00 PM**.
3. If condition 2 is breached, the Landlord is granted an Order of Possession that will be effective after service of the Order on the Tenant.

This settlement agreement was reached in accordance with Section 63 of the *Act*. The parties confirmed at the end of the hearing that this agreement was made on a

voluntary basis and that they understood the binding nature of this full and final settlement of these matters.

### Conclusion

The parties reached a full and final settlement agreement in resolution of this dispute. I have recorded the terms of settlement in this Decision and in recognition with the settlement agreement, based on the above, I hereby Order that the One Month Notice to End Tenancy for Cause of February 12, 2021 to be cancelled and of no force or effect.

In addition, in support of the settlement described above, and with agreement of both parties, the Landlord is granted a conditional Order of Possession effective after service of the Order on the Tenant if the Tenant fails to comply with condition 2 of this settlement agreement. Should the Tenant 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: May 31, 2021

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Residential Tenancy Branch