



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAMSTA NO. 2 LTD. PARTNERSHIP and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing dealt with a tenant's application for cancellation of a One Month Notice to End Tenancy for Cause ("1 Month Notice").

Both parties appeared and were represented at the hearing. The parties were affirmed and the parties were ordered to not record the proceeding. Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

### Preliminary and Procedural Matters

#### 1. Service

At the outset of the hearing, I explored service of hearing materials upon each other.

The tenant testified that he served the proceeding package to the resident manager, in person, approximately four months ago, on the same day he obtained the proceeding package from the Residential Tenancy Branch. The resident manager testified that she was away at the relevant time and that her assistant found the proceeding package in the landlord's mail slot the following day. Although leaving the proceeding package in a mail slot does not meet the service requirements of section 89(1), the landlord was willing to be deemed sufficiently served. As such, I deemed the landlord sufficiently served pursuant to the authority afforded me under section 71 of the Act.

The resident manager testified that the landlord's evidence was served to the tenant, in person, on October 11, 2022. The tenant confirmed he was served.

## 2. Amendment

The owner's agent raised an issue with respect to the name of the landlord. The agent testified that after the 1 Month Notice was issued, the property was sold. The agent requested that the name of the landlord be amended to reflect the name of the current owner. There was no objection from the tenant or his legal counsel. The application was amended accordingly.

## 3. Time limit to dispute 1 Month Notice

A tenant in receipt of a 1 Month Notice has 10 days to make an Application for Dispute Resolution to dispute it and the consequences for not making an application within those 10 days, are provided under section 47(4) and (5) of the Act. Below, I have reproduced those relevant paragraphs:

(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.

[My emphasis underlined]

In making this Application for Dispute Resolution the tenant provided a copy of a 1 Month Notice dated May 30, 2022 with a stated effective date of June 30, 2022. I have reviewed the 1 Month Notice and I note that it is in the approved form and it is duly completed.

In submitting this Application for Dispute Resolution, the tenant indicated he received the subject 1 Month Notice on June 1, 2022, which would give him until June 13, 2022 to make an Application for Dispute Resolution to dispute it after taking into account the 10<sup>th</sup> day fell on a weekend.

The landlord submitted; however, evidence that the tenant was served with the 1 Month Notice, in person, on May 30, 2022. The building manager testified to this and pointed to a Proof of Service that was signed by both the building manager and the tenant. The Proof of Service is dated May 30, 2022.

I turned to the tenant to explore this issue further and the tenant acknowledged he was uncertain as to the exact date he was served the 1 Month Notice.

The tenant's legal counsel confirmed the Proof of Service was in the landlord's evidence package that was before them and there was no dispute it was signed by the tenant and the document is dated May 30, 2022.

I informed the parties that I found the landlord's evidence, consisting of clear oral testimony of the building manager and a Proof of Service signed by the tenant and the building manager, in comparison to the tenant's uncertainty as to when he was served to be sufficient for me to find that the 1 Month Notice was served to the tenant, in person, on May 30, 2022 and not June 1, 2022 as the tenant indicated on the Tenant's Application for Dispute Resolution.

Having found the 1 Month Notice was received by the tenant on May 30, 2022 the tenant would have had until June 9, 2022 to make an Application for Dispute Resolution to dispute the 1 Month Notice.

The tenant submitted an application to the Residential Tenancy Branch, online, on June 13, 2022 and paid the filing fee on June 16, 2022.

The tenant's legal counsel argued the tenant was only a few days late, having filed the application on June 13, 2022; however, I find the tenant was actually 7 days late because he made the Application for Dispute Resolution on June 16, 2022, when payment was received for the application.

The tenant's legal counsel argued that in submitting the Application for Dispute Resolution online on June 13, 2022, the tenant was afforded three days to pay the filing fee, which he did. I informed the parties that the three days permitted to pay a filing fee in person does not extend the deadline for making an Application for Dispute Resolution, as explained below.

An application is considered to be made when the application is submitted AND the filing fee is paid (or the documents for a fee waiver are provided). Rules 2.4 and 2.6 of

the Rules of Procedure expressly provide for this and specifically state that there are three days to pay the filing fee before the application is considered abandoned and that the three day time period is NOT an extension of any statutory time limits.

Below, I have reproduced Rules 2.4 and 2.6 for the parties' further reference:

#### **2.4 Submit an Application for Dispute Resolution**

Applications for Dispute Resolution must be submitted through the Online Application for Dispute Resolution or to the Residential Tenancy Branch directly or through a Service BC Office with the required fee or fee waiver documents. Applicants who submit an Online Application for Dispute Resolution and choose to pay the fee or submit fee waiver documents in person must complete payment within three days of submitting the application. This three-day period for completing payment is not an extension of any statutory timelines for making an application.

#### **2.6 Point at which an application is considered to have been made**

The Application for Dispute Resolution has been made when it has been submitted and either the fee has been paid or when all documents for a fee waiver have been submitted to the Residential Tenancy Branch directly or through a Service BC Office. The three-day period for completing payment under Rule 2.4 is not an extension of any statutory timelines for making an application.

If payment is not completed or if all documents for a fee waiver are not submitted within three days as required, the application will be considered abandoned. To pursue the claims, the applicant must submit a new application—this does not provide an extension of time for any statutory timelines.

[My emphasis underlined]

In filing online, automatically generated emails were sent back to the tenant at the email address provided on his Application for Dispute Resolution, including the following message that was contained in an email sent to the tenant by the Residential Tenancy Branch on June 13, 2022:

Some applications must be submitted within a certain amount of time, like claims against a deposit or to cancel a Notice to End Tenancy. You must complete payment or submit proof of income for a fee waiver before the application deadline expires. Timelines for filing applications can only be extended in exceptional circumstances.

Having found the tenant was late filing this Application for Dispute Resolution by 7 days, I informed the parties that I may extend the filing deadline, in exceptional circumstances only, under section 66 of the Act.

4. Did an “exceptional circumstance” prevent the tenant from filing the Application for Dispute Resolution within the 10 day time limit for doing so?

The tenant testified that his girlfriend was hospitalized for “2 to 3 weeks” while undergoing treatment for lung cancer and this was around the time he received the 1 Month Notice. The tenant’s legal counsel suggested the tenant had obligations to care for his girlfriend, to which the tenant agreed, but considering the tenant’s girlfriend was in the hospital I did not hear of any particular or specific care obligations required of the tenant.

The tenant also stated he is employed and he had to take time off work to care for his girlfriend while she was in the hospital. I asked the tenant how much time he took off work and he responded he took about one week off.

In this case, the tenant had a 10 day window of opportunity to file an Application for Dispute Resolution to dispute the 1 Month Notice between the dates of May 30, 2022 and June 9, 2022.

The tenant did not provide any corroborating evidence concerning his inability to make the Application for Dispute Resolution between May 30, 2022 and June 9, 2022. While oral testimony is evidence, I note the tenant did not specific dates as to his girlfriend’s hospitalization or provide specific particulars as to his care obligations to his girlfriend.

The tenant did not provide specific dates as to when he took time off work but claims he took a week off. I find it difficult to believe that if he did take time off work that he could not find some time during that week to make his Application for Dispute Resolution. Also, it appears the tenant’s purported care obligations to his girlfriend must have eased at some time while his girlfriend was hospitalized since the tenant returned to work. Yet, the tenant did not pursue the Application for Dispute Resolution at that time either.

Based on what was before me, I was unsatisfied that an “exceptional circumstance” prevented the tenant from making his Application for Dispute Resolution within the 10 day window of opportunity afforded him under section 47 of the Act. Therefore, I denied the tenant’s request for an extension and I find the 1 Month Notice to be undisputed within the statutory period for doing so.

#### 5. Mutual agreement

I informed the parties of my findings concerning the late filed Application for Dispute Resolution and the denial of an extension.

I gave the parties the opportunity to discuss a mutual agreement to resolve this matter.

The parties were able to reach a mutual agreement and I have recorded it by way of this decision and the Orders that accompany it.

#### Issue(s) to be Decided

What are the terms of the mutual agreement?

#### Background and Evidence

During the hearing, the parties reached the following mutual agreement:

- The tenant shall be permitted occupancy of the rental unit until December 31, 2022 provided the tenant:
  - Pay the monthly rent of \$1015.00 for the months of November 2022 and December 2022; and,
  - Not permit or allow his girlfriend or his brother to enter the rental unit.
- The landlord shall be provided an Order of possession with an effective date of December 31, 2022.
- The landlord shall be provided a conditional Order of Possession that shall be effective 30 days after it is served to the tenant. This conditional Order of Possession may only be served upon the tenant if the building manager determines the tenant has breached his agreement to not permit or allow his girlfriend or his brother to enter the rental unit.

The above terms were reviewed with both parties during the hearing and both parties confirmed they were in agreement with the terms.

### Analysis

Pursuant to section 63 of the Act, I have the authority to assist parties in reaching a settlement agreement during the hearing and to record the agreement in the form of a decision or order.

I have accepted and recorded the mutual agreement reached by the parties during this hearing and I make the term(s) an Order to be binding upon both parties.

In recognition of the mutual agreement, I provide the landlord with two Orders of Possession, as follows:

- An Order of Possession effective at 1:00 p.m. on December 31, 2022.
- A conditional Order of Possession effective 30 days after it is served upon the tenant. This conditional Order of Possession may only be served to the tenant if the building manager determines the tenant has breached the agreement made during this hearing to not permit or allow his girlfriend and his brother to enter the rental unit.

### Conclusion

The tenant made to dispute a 1 Month Notice outside of the statutory time limit for doing so. I was unsatisfied an “exceptional circumstance” prevented the tenant from making an Application for Dispute Resolution within the statutory time limit for doing so and I did not grant an extension of time to the tenant.

The parties reached a mutual agreement with respect to the tenant’s continued occupation of the rental unit that I have recorded in this decision and made binding. In recognition of the parties’ mutual agreement, I provide the landlord with an Order of Possession effective at 1:00 pm on December 31, 2022. I also provide the landlord a conditional Order of Possession that may only be served in the event the tenant breaches his agreement to not permit or allow his girlfriend and his brother to enter the rental unit.

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: November 02, 2022

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Residential Tenancy Branch