



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      OPC, FF

### Introduction

This matter dealt with an application by the Landlord for an Order of Possession and to recover the filing fee for this proceeding.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by posting on the door of the Tenant's rental unit on March 3, 2011. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

### Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

### Background and Evidence

This tenancy started on May 1, 2006 as a 1 year fixed term tenancy with an expiry date of April 30, 2007 and then renewed as a month to month tenancy. Rent is \$620.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$300.00 on May 1, 2006.

The Landlord said he issued a 1 Month Notice to End Tenancy for Cause dated January 26, 2011 by personal delivery on January 26, 2011 with an effective vacancy date of February 28, 2011. The Landlord continued to say he issued the Notice because the Tenant had unreasonably disturbed other tenants in the rental complex and had breached a material term of the tenancy agreement. The Landlord said he had included complain letters from other tenants about noise issues and a number of copies of written Caution Notices to the Tenant for tenancy violations and material breaches of the tenancy agreement. The Landlord said the Notice to End Tenancy was issued for the noise issues and for smoking marijuana in the rental unit. The Landlord said he witnessed marijuana smoke in the Tenant's unit and he had many verbal discussions with the Tenant about not smoking marijuana in the rental complex. The Landlord said the rental complex is a Crime Free unit and the Tenant disregarded the verbal warnings and the written Caution Notices. The Landlord said he is requesting an Order of

Possession for these violations of the tenancy agreement and would like it as soon as possible as the Tenant is causing damage to the rental unit.

### Analysis

Section 47(b) says a landlord may end a tenancy by giving a notice to end tenancy if the if the tenant or occupants unreasonable disturbs other tenants or the landlord or breaches a material term of the tenancy agreement.

The Landlord provided testimony and written evidence of two complaint letters from another tenant and three written Caution Notices to the Tenant indicating the Tenant has created a disturbance and has significantly interfered with other tenants and the Landlord. As well I accept the Landlord's testimony and written evidence that the Tenant has breached a material term of the tenancy agreement by smoking marijuana in the rental unit. I find that the Landlord has established grounds to receive an Order of Possession.

Section 47(4) of the Act states that **within 10 days of receiving** a Notice to End Tenancy for Cause, a Tenant may apply for dispute resolution. If the Tenant fails to do this, then under section 47(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy on the day it was served, or on January 26, 2011. Consequently, the Tenant would have had to apply to dispute the Notice by February 5, 2011.

I find that the Tenant has not applied for dispute resolution. Consequently, I find pursuant to s. 55 of the Act that the Landlord is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenant.

I also find that as the Landlord was successful in this matter he is entitled to recover the filing fee of \$50.00 for this proceeding from the Tenant. I order the Landlord to retain \$50.00 from the Tenant's security deposit as full payment of the filing fee for this proceeding.

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant has been issued to the Landlord. A copy of the Order must be served on the Tenant: the Order of Possession may be enforced in 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*.

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Residential Tenancy Branch