



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, OPB, MNR and FF

### Introduction

This hearing was convened on an application by the landlord on July 6, 2012 for an Order of Possession pursuant to a Notice to End Tenancy for cause served in person on June 4, 2011. The landlord also sought a monetary award for unpaid rent for July 2012 and recovery of the filing fee for this proceeding.

Despite having been served with the Notice of Hearing sent by registered mail on July 7, 2012, the tenant did not call in to the number provided to enable his participation in the telephone conference call hearing. Therefore, it proceeded in his absence.

At the commencement of the hearing, the landlord advised that the tenant had paid the July rent and withdrew his request for a Monetary Order.

### Issue(s) to be Decided

This matter requires a decision on whether the landlord is entitled to an Order of Possession and recovery of the filing fee for this proceeding.

### Background and Evidence

This tenancy began in on November 15, 2011. Rent is \$575 per month and the landlord holds a security deposit of \$285 paid at the beginning of the tenancy.

During the hearing, the landlord gave evidence that the notice had been served because the tenant had been late paying rent on four or five occasions. He stated that the tenant had also breached a material term of the rental agreement by smoking in the rental unit, among others.

As a matter of note, the Notice to End Tenancy set an end of tenancy date of July 4, 2012. However, that is automatically corrected to July 31, 2012 by section 53 of the *Act* to conform with section 47(2) of the *Act* which requires that such notice may only end the tenancy one full month following the next rent due date after service.

### Analysis

Section 47 of the *Act* empowers a landlord to issue a one-month Notice to End Tenancy for cause. Subsection 47(1)(b) applies when the tenant is repeatedly late paying rent and subsection 47(1)(h) applies when the tenant has breached a material term of the rental agreement..

Section 47(5) of the *Act*, which is restated on the Notice to End Tenancy, provides that if a tenant receives a one-month Notice to End Tenancy for cause and does not make application to contest the notice within 10 days, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice.

In the absence of such application from the tenant, I find that the landlord is entitled to an Order of Possession to take effect on 1 p.m. on July 31, 2012.

I further find that, as the application has succeeded on its merits, the landlord is entitled to recover the filing fee for this proceeding from the tenant. As authorized by section 72 of the *Act*, I hereby order that the landlord may retain \$50 from the tenant's security deposit to recover the fee.

### Conclusion

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia to take effect at 1 p.m. on July 31, 2012.

The landlord is authorized to retain \$50 from the tenant's security deposit to recover the filing fee for this proceeding.

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: July 25, 2012.

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Residential Tenancy Branch