



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPC, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for an order of possession for cause pursuant to section 55 and to recover his filing fee from the tenant.

The tenant did not attend this hearing, although I waited until 1119 in order to enable the tenant to connect with this teleconference hearing scheduled for 1100. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

### Service

The landlord gave undisputed sworn testimony that on 30 September 2014, he served a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) on the tenant by delivering it personally to the tenant. I am satisfied that the 1 Month Notice was served on 30 September 2014 in accordance with section 88 of the Act.

The landlord testified that he served the tenant with the dispute resolution package at 1330 on 3 November 2014 by leaving it with the tenant's son. The tenant's son is approximately 24-years old and lives with the tenant. On the basis of this evidence, I am satisfied that the tenant was served with notice of the landlord's application for an end to this tenancy and the issuance of an order of possession on 3 November 2014, pursuant to section 89(2)(c) of the Act.

Subsection 89(1) of the Act does not allow a party seeking a monetary order to serve a dispute resolution hearing package to an adult apparently residing at the rental unit. I find that the tenant was not served with the landlord's application for a monetary order

to recover the filing fee in accordance with section 89(1) of the Act. The landlord's application to recover his filing fee for this application is dismissed with leave to reapply.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession for cause?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the uncontested, sworn testimony of the landlord, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around each are set out below.

The 1 Month Notice sets an effective date of 31 October 2014. The 1 Month Notice sets out, among other reasons, that the tenant or person permitted on the property by the tenant has "*engaged in illegal activity that has, or is likely to...jeopardize a lawful right or interest of...the landlord*".

The tenant did not apply for dispute resolution within ten days of receiving the 1 Month Notice.

The landlord provided me with a letter from the City of Burnaby dated 8 August 2014. This letter states that the City inspected the residential property. In the course of the inspection, they found breaches of the City's bylaws. These breaches included storage of various vehicles, overgrowth of the garden, and debris.

On 12 August 2014, the landlord gave written notice to the tenant to clean the property. The landlord provided the tenant with a copy of the City's 8 August 2014 letter.

On 19 September 2014, the landlord received another letter from the City of Burnaby. This letter reiterated the demand to remove the vehicles and debris. The letter also set out that there would be a final inspection on 20 October 2014 and that if the problem was not solved by then, the City would apply to enter the property and undertake the cleanup themselves. The cleanup expense would be charged to the landlord.

On 12 August 2014, the landlord provided the City's letter of 19 September 2014 and reiterated his written request to clean up the outside of the residential property. The landlord offered to help the tenant with the cleanup effort. The landlord testified that his offer was rejected.

## Analysis

In an application for an order of possession on the basis of a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met. Subparagraph 47(1)(e)(iii) of the Act permits a landlord to terminate a tenancy by issuing a 1 Month Notice in cases where a tenant or person permitted on the residential property by the tenant has engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of the landlord. The landlord has set out in his 1 Month Notice, among other reasons, that the tenant has engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of the landlord.

The landlord has provided ample, uncontested and sworn evidence that the tenant has engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of the landlord by continually and flagrantly violating the City of Burnaby bylaws. Furthermore, pursuant to subsection 47(5) of the Act, where a tenant does not apply for dispute resolution within ten days of receiving a 1 Month Notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice. The tenant has not applied for dispute resolution.

For the reasons outlined above, I find that the 1 Month Notice is validly issued and will not consider the other reasons for cause set out by the landlord in the 1 Month Notice. The landlord is entitled to an order of possession.

## Conclusion

The landlord is provided with a formal copy of an order of possession. Should the tenant(s) 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 subsection 9.1(1) of the Act.

Dated: November 20, 2014

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Residential Tenancy Branch