



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding NORTH PARK MANOR SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC

### 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;

The landlord's agent ("landlord") and the tenant attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses.

The landlord gave sworn testimony that a 1 Month Notice to End Tenancy for Cause, dated September 16, 2014 ("1 Month Notice"), was served by posting to the door of the tenant's rental unit on September 16, 2014. The tenant confirmed that he received the 1 Month Notice on September 17, 2014. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 1 Month Notice on September 19, 2014, the third day after its posting.

The landlord testified that he served the tenant with a copy of the application for dispute resolution hearing notice on September 30, 2014, by posting it to the door of the tenant's rental unit. The tenant confirmed that he received the notice on October 1, 2014. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the notice on October 3, 2014, the third day after its posting.

The landlord testified that he sent various letters written by the tenant to the landlord, from his written evidence package, to the tenant via registered mail on September 3, 2014 and provided a tracking number for this mailing, orally during the hearing. The tenant stated that he did not receive the landlord's written evidence package consisting of 23 pages and 4 photographs. However, the tenant confirmed that he had most of the documents from the landlord's written evidence package, already in his possession, prior to the hearing. Many of these documents were letters written by the tenant to the

landlord, as well as the tenancy agreement and the 1 Month Notice. The only documents that the tenant did not have in his possession were the 4 photographs submitted by the landlord, the letter from the landlord to the tenant, dated September 3, 2014, and the typed summary of the landlord for this application. Accordingly, I proceeded with the hearing on the basis of the landlord's written evidence that the tenant acknowledged he already had in his possession, but I did not consider the evidence that the tenant did not have in his possession. I find that there would be no denial of natural justice in considering the landlord's written evidence as outlined above.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for cause?

### Background and Evidence

The landlord testified that this tenancy began on July 15, 2011 on a month-to-month basis. Monthly rent is payable in the amount of \$430.00 on the first day of each month. A security deposit in the amount of \$215.00 was paid by the tenant prior to the beginning of this tenancy, but the landlord could not recall the exact date. A written tenancy agreement was provided with the landlord's application.

The landlord entered into written evidence a copy of his 1 Month Notice. In that Notice, requiring the tenant to end this tenancy by November 1, 2014, the landlord cited the following reason for the issuance of the Notice:

*Tenant or a person permitted on the property by the tenant has:*

- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord.*

The landlord testified that the tenant affected the lawful right of the landlord by preventing access to the tenant's rental unit in order to complete required replacement of windows. The landlord testified that all rental units in the building were having windows replaced, as the building is more than thirty years old and has failing windows.

The landlord testified that he posted notices to enter the tenant's unit and the tenant subsequently prevented access to the rental unit. The landlord provided a letter with his application, dated September 7, 2014, written by the tenant to the landlord, where the tenant advised the landlord, any staff of the landlord, and the window contractors to stay away from his rental unit and his door. The landlord also provided other various letters with his application, written by the tenant to the landlord, from August and September

2014. In those letters, the tenant makes defamatory and threatening comments towards the landlord and advises the landlord that he is preventing access to his rental unit for the window replacement to be completed.

The tenant testified that the landlord unlawfully gained access to his rental unit without proper notice. He stated that the landlord gave 48 hours notice in August 2014 but the window contractors entered the rental unit less than 24 hours later, without his permission, and left as per the tenant's request. The tenant cited health concerns in one of his August 2014 letters to the landlord, requiring rescheduling of the window replacement. However, the tenant sent a further letter to the landlord in September 2014 denying access to his rental unit. The tenant has still not permitted access to his rental unit to complete the full window replacement, to date.

### Analysis

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

Section 32 of the Act requires the landlord to provide and maintain residential property in a state of repair that complies with health, safety and housing standards required by law and having regard to the age, character and location of the rental unit, makes it suitable for occupation by the tenant. Section 29 allows the landlord to gain access to the tenant's rental unit, subject to certain conditions. The landlord testified that he provided notices in writing to the tenant to gain access to the rental unit. He stated that he was denied entry by the tenant and barred from entry pursuant to multiple written letters from the tenant, which were provided with the landlord's application. The landlord has been unable to replace the windows, as required, in an old building where the windows are failing. The landlord testified that only one main window was replaced in the tenant's rental unit after intervention by the tenant's family, but no other windows have been replaced, as required. I find that the tenant has seriously jeopardized the lawful right of the landlord to access the rental unit and make required replacements of the windows.

The tenant testified that he received the 1 Month Notice and was aware that he could be evicted if he did not respond to the Notice. The tenant has not made an application to date, regarding this 1 Month Notice. He states that he is disabled and approached the Minister of Health to intercede in this matter, but the tenant did not call any witnesses at this hearing or provide any documentation to that effect.

The tenant testified that he received the 1 Month Notice on September 17, 2014. The tenant was deemed to have received the 1 Month Notice on September 19, 2014. The tenant has not made an application pursuant to section 47(4) of the *Act* within ten days of being deemed to have received the 1 Month Notice. In accordance with section 47(5) of the *Act*, the failure of the tenant to make an application to dispute the 1 Month Notice within ten days, led to the end of this tenancy on November 1, 2014, the effective date on the 1 Month Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by November 1, 2014. As this has not occurred, I find that the landlord is entitled to an Order of Possession. During the hearing, the landlord testified that he would be willing to provide the tenant until 1:00 p.m. on November 30, 2014 to vacate the premises.

During the hearing, I informed both parties that I would be issuing an Order of Possession to the landlord, requiring the tenant to vacate the rental unit by 1:00 p.m. on November 30, 2014. The tenant confirmed during the hearing that he understood that he was being evicted from his rental unit.

#### Conclusion

I grant an Order of Possession to the landlord effective **on or before 1:00 p.m. on November 30, 2014**. Should the tenant or anyone on the premises 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: November 14, 2014

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Residential Tenancy Branch

