



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding The Fair Haven United Church Homes  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes: OPC, MNR, MNSD, FF

### Introduction

This hearing concerns the landlord's application for an order of possession / a monetary order as compensation for unpaid rent / retention of the security deposit / and recovery of the filing fee. The landlord's agents (the "landlord") attended and gave affirmed testimony. The tenant did not appear.

The landlord testified that the application for dispute resolution and the notice of hearing (the "hearing package") was served on the tenant by way of registered mail. Evidence submitted by the landlord includes the Canada Post tracking number for the registered mail, and the Canada Post website informs that the package was "successfully delivered" to the tenant on May 14, 2015. Based on the documentary evidence and the affirmed / undisputed testimony of the landlord, and pursuant to sections 89 and 90 of the Act which speak, respectively, to **Special rules for certain documents** and **When documents are considered to have been received**, I find that the tenant has been duly served.

### Issue(s) to be Decided

Whether the landlord is entitled to any of the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

Pursuant to a written tenancy agreement the tenancy began on October 01, 2004. Monthly rent is due in advance on the first day of each month. Effective October 01, 2014, monthly rent was increased to \$444.00. A security deposit of \$125.00 was collected on September 20, 2004.

Pursuant to section 47 of the Act which addresses **Landlord's notice: cause**, the landlord issued a 1 month notice to end tenancy dated April 07, 2015. The notice was

served by way of posting to the unit door on that same date. A copy of the notice was submitted in evidence. Reasons identified on the notice in support of its issuance are as follows:

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
- put the landlord's property at significant risk

Subsequently, the tenant has not filed an application to dispute the notice and she continues to reside in the unit. The landlord further testified that for the present time, rent has only been paid to the end of May 2015.

In summary, the landlord claims that the unit "is a fire and safety hazard due to the clutter, garbage, excessive items constricting space, and unclean / unsanitary condition." Additionally, on February 27, 2015, a pest control technician documented that the unit was unable to be inspected "due to unsanitary / hoarding conditions." Efforts over several years to assist the tenant to remedy the aforementioned problems have been met with limited success. Evidence submitted includes, but is not limited to, correspondence to the tenant from the landlord and photographs taken within the unit.

### Analysis

Section 47 of the Act provides in part as follows:

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(d) the tenant or a person permitted on the residential property by the tenant has

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

(iii) put the landlord's property at significant risk;

Based on the documentary evidence and the affirmed / undisputed testimony of the landlord, I find that the tenant was served with a 1 month notice to end tenancy for cause dated April 07, 2015. Consistent with reasons identified on the notice in support

of its issuance, I find that the landlord has met the burden of proving that the tenant has “seriously jeopardized the health or safety or a lawful right of the interest of the landlord,” and that she has “put the landlord’s property at significant risk.”

The tenant did not file an application to dispute the notice within 10 days after receiving it, and she is therefore conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on the effective date of the notice. In the result, I find that the landlord has established entitlement to an **order of possession**, and during the hearing the landlord requested that such an order be made effective **June 30, 2015**.

In the application which the landlord filed on April 24, 2015, the landlord also seeks a monetary order in anticipation of unpaid rent for May 2015. However, the landlord testified that rent has now been paid for May 2015, even while it has not presently been paid for June 2015. In relation to June’s rent, the attention of the parties is drawn to section 26 of the Act, which addresses **Rules about payment and non-payment of rent**, and provides in part:

26(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The attention of the parties is also drawn to section 46 of the Act which addresses **Landlord’s notice: non-payment of rent**, and provides in part:

46(1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

In the absence of any evidence that the landlord has served the tenant with a 10 day notice to end tenancy for unpaid rent for June 2015, the landlord’s application for a monetary order as compensation for unpaid rent is dismissed with leave to reapply.

Further, as the tenant still occupies the unit and the landlord has not presently incurred any of the anticipated costs of cleaning and / or repairs to the unit, this aspect of the application for compensation is also dismissed with leave to reapply.

As the landlord has succeeded with a principal aspect of the application, I find that the landlord has also established entitlement to recovery of the full **\$50.00** filing fee. I order that the landlord withhold this amount from the tenant’s security deposit at such time as the tenancy ends.

Finally, as the end of tenancy nears, the attention of the parties is drawn to the following sections of the Act:

Section 37: **Leaving the rental unit at the end of tenancy**

Section 38: **Return of security deposit and pet damage deposit**

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective **June 30, 2015**. This order must be served on the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I order that the landlord may withhold **\$50.00** from the security deposit at the end of tenancy in order to recover the filing fee for this application.

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: June 09, 2015

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Residential Tenancy Branch

