



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, FF

### Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for Cause; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession based on the One Month Notice to End Tenancy for Cause (the Notice).

### Background and Evidence

The parties agreed that this tenancy started on October 01, 2014 for a fixed term until September 30, 2015, thereafter continuing as a month to month tenancy. Rent for this unit is \$950.00 per month due on the 1<sup>st</sup> day of each month. The tenant paid a security deposit of \$475.00.

The landlord testified that the tenancy agreement specifies that no pets are allowed in the unit. The tenant kept two cats in the unit without the landlord's permission. The

tenant was served with a breach letter concerning the cats on April 30, 2015. This letter indicated that the tenant had 30 days to comply with a material term of the tenancy agreement and remove the cats. The tenant did not comply and another breach letter was sent to the tenant on July 04, 2015. The tenant was given another 30 days to comply. Cats were still seen in the tenant's unit and photographs have been taken of the cats in the window of the tenant's unit. In October, 2015 the landlord's wife went to the unit to serve a Notice to the tenant. A man answered the door and identified himself and a cat was seen at the door. Later the landlord returned to the unit and the same man answered the door, identified himself and the landlord saw a cat at the door. The man was asked to sign the proof of service document for the Notice but as he refused to do so the landlord left the Notice in the tenant's mail box on October 01, 2015.

The landlord testified that the cats were still in the unit and were seen at the window on December 08, 2015. The landlord has provided photographic evidence showing two cats at the window. The landlord testified that as of last night he drove by the tenant's unit and again saw two cats at the window. The landlord seeks to obtain an Order of Possession effective as soon as possible. The landlord has provided a copy of the Notice in documentary evidence. This Notice indicates that the tenant has breached a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to do so. The Notice has an effective date of November 09, 2015.

The tenant testified that she removed the cats in June, 2015 and did not get a warning letter in April, 2015 but did get one in July, 2015. The tenant testified that she did not receive a Notice to End Tenancy for Cause and was away from home when the landlord indicated he had served it. The tenant testified that if the landlord took pictures of the cats on December 08, 2015 the pictures would show snow on the ground. The tenant disputed that there was not a man in her home as her ex-boyfriend was with her at a wedding she attended.

The landlord testified that it did not snow until December 21, 2015 and the pictures of the cats were taken on December 08, 2015 so there was no snow shown in the pictures.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. The tenant has testified that there was not a man at her house yet the landlord and his wife both saw a man at the tenant's house and this man clearly identified himself to both the landlord and the landlord's wife on two occasions. The tenant testified that there was snow on the ground on December 08, 2015 yet it did not snow in the area until December 21, 2015. The tenant testified that she did not receive a One Month Notice to End Tenancy yet the landlord has provided a proof of service document signed by his wife acting as a witness that service of the One Month Notice took place on October 01, 2015. The tenant also testified that she did not get a warning letter about the cats until July, 2015 yet she removed the cats because of a warning letter in June, 2015. I find the tenant's testimony to lack credibility concerning when the cats were removed, the warning letters and the service of the One Month Notice.

I am satisfied with the landlord's evidence that the tenant did breach a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to do so and that the tenant was served with a One Month Notice to End Tenancy for Cause.

When a tenant is served with a One Month Notice to End Tenancy the tenant is provided with information on page two of that Notice about how the tenant can dispute the Notice by filing an application for Dispute Resolution. The landlord has provided a copy of this Notice served upon the tenants on October 01, 2015. As this Notice was served by putting it in the tenant's mailbox it is deemed served three days later on October 04, 2015. The effective date of the Notice is therefore amended to November 30, 2015 pursuant to s. 53 of the *Act* as one clear month's Notice must be provided. The

tenant has not disputed the One Month Notice within the 10 allowable days as indicated on page two of the Notice.

Consequently, as the tenant did not file an application to dispute the Notice the tenant is presumed to have accepted the end of the tenancy pursuant to s. 47 (5) of the *Act*. The landlord is therefore entitled to an Order of Possession pursuant to s. 55 of the *Act*.

As the landlord's application has merit I find the landlord is entitled to recover the filing fee from the tenant of \$50.00. The landlord may retain this amount from the tenant's security deposit leaving a balance of \$425.00 which must be dealt with in accordance with s. 38 of the *Act*.

#### Conclusion

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days after service upon the tenant**. This Order must be served on the Respondent. If the Respondent fails 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.

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: December 29, 2015

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Residential Tenancy Branch

