



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SOUTH OKANAGAN SIMILKAMEEN BRAIN INJURY SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: OPQ

### **Introduction:**

Only the landlord attended the hearing and gave sworn evidence of service of the Notice to End Tenancy by posting it on the door and personal service of the Application. A witness provided proof of service. The application by the landlord is to obtain an Order of Possession pursuant to section 49.1 of the Act as the tenant has ceased to qualify for the rental unit and to recover the filing fee.

**Issues:** Has the landlord proved on the balance of probabilities that the tenant has ceased to qualify for the rental unit and they are entitled to an Order of Possession?

### **Background and Evidence:**

Only the landlord attended the hearing and was given opportunity to be heard, to provide evidence and to make submissions. The evidence is that the tenancy began on June 19, 2014, a security deposit of \$382 was paid and current market rent is \$817 but is subsidized so the tenant pays \$468 based on her income. The landlord served the Notice to End Tenancy pursuant to section 49.1 of the Act because the tenant no longer qualifies for the subsidized unit she is occupying. She no longer has custody of her child for at least 40% of the time.

The landlord said they became aware of this in June 2015 and wrote to the tenant that they needed some written proof of custody arrangements for at least 40% of the time. The tenant never replied and has produced no written proof of her custody arrangement. Her lawyer sent a letter dated July 14, 2015 requesting more time to arrange custody but the landlord still has received no evidence of a resolution. They said it is clear that a child is not living there.

The landlord also sent in photographs to illustrate the tenant's problems. There are metal scraps piled high in the unit, a number of gas camping stoves being stored and holes in the walls. The landlord is concerned for the safety of other residents as the materials are hazardous. They request an Order of Possession as soon as possible and to recover the filing fee.

**Analysis:**

The Notice to End a Residential Tenancy is based on non qualification for the rental unit pursuant to section 49.1 of the Act. Section 49.1(6) provides that if a tenant does not make an application to have the Notice set aside within 15 days of receipt, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the unit. I find no evidence that the tenant has disputed this Notice which was received posted on her door on September 25, 2015. Therefore, I find the tenancy is at an end and the landlord is entitled to an Order of Possession.

Furthermore, even if the tenant had disputed the Notice, I find the weight of the evidence is that she no longer qualifies for the rental unit as she has not provided proof of custody of her child for at least 40% of the time. The landlord has emphasized the hazards of the tenant's storage of dangerous items and requests an Order of Possession as soon as possible. I find the landlord entitled to an Order of Possession effective two days from service.

The landlord requested some guidance on handling the tenant's goods if she left them behind. I referred the landlord to section 24, Part 5 of the Residential Tenancy Regulations which are available online.

**Conclusion:**

I grant the landlord an Order for Possession effective two days from service. **I HEREBY ORDER THAT the landlord may recover the filing fee by deducting \$50 from the tenant's security deposit.**

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: January 13, 2016

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Residential Tenancy Branch

