



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, FF

### Introduction

On March 29, 2016, the Landlord submitted an Application for Dispute Resolution for an order of possession, and to recover the cost of the filing fee. The matter was set for a conference call hearing at 1:30 p.m. on this date.

The Landlord attended the conference call hearing; however, the Tenant did not. The Landlord testified that he served the Tenant with the Notice of Hearing by hand delivering a copy to a co-Tenant who acts as his agent, and by leaving a copy in the mailbox of the Tenant's residence on April 18, 2016. The Landlord testified that he had a discussion with the Tenant after service of the Notice about the upcoming hearing and that the Tenant has agreed to move out. I find that the Tenant has been duly served in accordance with the Act.

The Landlord was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions at the hearing.

### Issues to be Decided

Is the Landlord entitled to an order of possession for cause?  
Is the Landlord entitled to recover the cost of the filing fee?

### Background and Evidence

The tenancy agreement provided by the Landlord indicates that it is a fixed term tenancy that began on February 01, 2015, and continues until February 28, 2017. Rent in the amount of \$2,350.00 is payable on the first of each month. The Tenant paid a \$1,175.00 security deposit.

The Landlord testified that the City of Surrey sent him a letter dated January 12, 2016, stating that he is permitting an unregistered recovery home to operate on the property and he is required to stop the non-permitted use by February 15, 2016, and to conform to all City of Surrey Regulations. The Landlord testified that the Tenant received the same letter and they were each fined \$250.00 by a bylaw officer.

The Landlord testified that he issued a 1 Month Notice to End Tenancy for Cause ("the Notice") by handing it to an adult female who lives in the house on February 8, 2016. The Landlord also testified that he left a copy of the Notice in the mailbox of the rental unit. The reasons checked off by the Landlord within the Notice are as follows:

- The Tenant has allowed an unreasonable amount of occupants in the unit.
- The Tenant has assigned or sublet the rental unit without the Landlord's written consent.
- The rental unit/ site must be vacated to comply with a government order.

The Notice states the Tenant must move out of the rental unit by March 15, 2016. The Notice informed the Tenant of the right to dispute the Notice within 10 days after receiving it. The Notice also informed the Tenant that if an application to dispute the Notice is not filed within 10 days, the Tenant is presumed to accept the Notice and must move out of the rental unit on the date set out on page 1 of the Notice.

There is no evidence before me that that the Tenant made an application to dispute the Notice.

Section 53 of the Act states that if a Landlord or Tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the Notice is deemed to be changed to be the earliest date that complies with the section.

The Landlord seeks an order of possession effective April 30, 2016, and a monetary order for the cost of the filing fee in the amount of \$100.00.

### Analysis

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I find that the Tenant did not apply to dispute the Notice, and 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.

I find that the Notice was served on February 8, 2016, and therefore the effective date of the Notice automatically changes to March 31, 2016, under section 53 of the Act.

If successful, the Landlord asked that the Order of Possession be dated effective April 30, 2016. I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective at 1:00 pm on April 30, 2016, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to pay the Landlord the \$100.00 fee that the Landlord paid to make application for dispute resolution.

Conclusion

The Tenant did not file to dispute the Notice. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice.

The Landlord is granted an order of possession effective at 1:00 pm on April 30, 2016, and I order that the Tenant pay the Landlord \$100.00 for the cost of the filing fee.

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: April 27, 2016

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Residential Tenancy Branch