



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, FF

### Introduction

This hearing dealt with a landlord's Application for Dispute Resolution (the "Application") under the Residential Tenancy Act (the "Act") for:

- an order of possession for cause; and
- recovery of the filing fee paid for this application from the tenant.

The landlord's agent (the "Landlord") appeared at the teleconference hearing and gave affirmed testimony. The tenant did not appear during the hearing which lasted 29 minutes. The landlord appeared with three witnesses who did not give any testimony given the undisputed application in the absence of the tenant. During the hearing the landlord was given a full opportunity to be heard, to present sworn testimony, and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing") was considered.

The landlord testified that on November 9, 2016 at 2:45 p.m. the tenant was served personally with one package which included the landlord's Application and Notice of Hearing. The landlord also testified that this same package was sent to the tenant at the rental unit by registered mail on November 8, 2016. The landlord provided a Tracking Number orally to confirm the mailing. I find that the tenant was duly served with the landlord's Application and Notice of Hearing on November 9, 2016.

The landlord also testified that she sent the tenant a copy of her evidence, the same as was submitted to the Residential Tenancy Branch, by registered mail on November 22, 2016. The landlord provided a Tracking Number orally to confirm the mailing. Taking into account that the online registered mail tracing information supports the undisputed testimony of the landlord, and in accordance with sections 88 and 90 of the Act, I find that the tenant has been deemed to have received the landlord's evidence package as of November 27th, 2016, the fifth day after the registered mail was sent.

### Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for case pursuant to s.55 of the Act?
- Is the landlord entitled to recover the filing fee for this application from the tenant pursuant to s.72 of the Act?

### Preliminary and Procedural Matters

The landlord confirmed the correct address for the landlord and the tenant. The landlord confirmed that the second “avenue” and “street” shown in the addresses on her Application are typos and should be ignored.

### Background and Evidence

The tenant was served a One Month Notice to End Tenancy for Cause (the “One Month Notice”) by posting a copy on her door on August 17, 2016. The One Month Notice set out the landlord’s reasons as follows:

- the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The undisputed testimony of the landlord is that the tenant started a new tenancy on May 1, 2016, pursuant to a written tenancy agreement, that was signed by the tenant on April 1, 2016. The tenant resided in a different unit in the same complex previously. The landlord did not indicate whether this was a month to month tenancy or a fixed term. The landlord gave oral testimony as to the terms of the tenancy agreement as a copy was not submitted. The rent is \$1,500.00 due on the first day of each month. The landlord testified that the tenant has not paid the rent due for December 2016.

The landlord testified that the tenant has received a number of noise complaints from various occupants in the building. In the tenant’s previous unit, the tenant was warned about several complaints made about loud music from her unit in a letter dated February 10, 2016. After the tenant moved into the current rental unit, the tenant was again notified of noise complaints in a letter dated June 7, 2016. These complaints were about loud talking from the tenant’s balcony suite at 2:11 a.m.

According to the landlord, Witness D.M., a neighbor, made a complaint to the landlord on June 8, 2016 about the tenant. The landlord testified that Witness D.M. complained about a loud party with music playing and people on the tenant's balcony until 3:45 a.m. on the previous Sunday night. According to the landlord, Witness D.M. complained the party was unreasonably loud with obvious drunken behavior. On Saturday July 9, 2016, Witness D.M. made another noise complaint about the tenant playing loud rap music and yelling obscenities at pedestrians on the sidewalk from her balcony. The neighbor noted that many of the pedestrians were fellow tenants.

On July 11, 2016, Witness K.K. complained to the landlord in an email about the events of the previous Saturday describing loud music blaring from the tenant's balcony and the tenant singing loudly on the deck, swearing and being obnoxious. This neighbor called security who arrived to find the tenant fully naked when she answered the door. The witness described in his email that the tenant was yelling homophobic slurs at pedestrians, propositioned sex from others and made fun of other people for the way they looked. The landlord sent the tenant a warning letter dated July 12, 2016 setting out the complaints made about her behavior from her balcony on July 9, 2016.

Witness K.K. sent a further email dated August 6, 2016 complaining about the tenant's music blaring at 8:00 p.m. and how the tenant turned up the volume after security attended asking her to turn it down. The witness complained that the music was still blaring at 9:15 p.m. The witness informed the landlord that this was the last straw and that he would be moving if the tenant was not evicted.

Witness K.K. complained to the landlord in another email dated August 15, 2016 about loud music and partying waking him up at 4:00 a.m. Security attended and the tenant again answered the door naked. The tenant, who was intoxicated, knocked on the witness' door fully naked except for a jacket wanting to have a discussion at 4:30 a.m. Witness K.K. complained that he hardly slept that night.

Witness J.M. sent an email on August 17, 2016 to the landlord complaining about the tenant. Witness J.M. complained that she was woken up by a woman's voice yelling and door slamming at 4:15 a.m. on the previous Monday.

Another Witness W.R., who was not present at the hearing, complained to the landlord in a letter dated August 15, 2016 about loud music being played by the tenant at 4:00 a.m. that woke her up.

The tenant was sent a final notice about the further complaints in a letter dated August 17, 2016.

### Analysis

Based on the undisputed testimony of the landlord and documentary evidence, and on a balance of probabilities, I find the following.

As the tenant was served with the Notice of Hearing and the landlord's Application and did not attend the hearing, I consider this matter to be unopposed by the tenant. As a result I find the landlord's application is fully successful as I find the evidence supports the landlord's claim and is reasonable.

I find that there is sufficient evidence to find that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed several occupants. Based upon this finding, I need not consider whether there has been a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

I am satisfied that the tenant was properly served the One Month Notice in accordance with the *Act* and that the One Month Notice complies with s.52 of the *Act*. Therefore, I find that the landlord is entitled to an order of possession.

I find that the landlord is also entitled to recover the \$100.00 filing fee from the tenant.

### Conclusion

Pursuant to s. 55 of the *Act*, I grant an Order of Possession to the landlord effective two days after service of this Order on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlord is entitled to a monetary order in the amount of \$100.00 for the filing fee.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 22, 2016

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Residential Tenancy Branch