



# 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 the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for an Order of Possession for cause pursuant to section 55 and authorization to recover his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The tenant confirmed receipt of the landlord's dispute resolution package, including the evidence packages. The tenant indicated that he had no issue with me considering the landlord's late evidence received on November 30, 2016. In accordance with sections 89 of the *Act*, I find that the tenant was duly served with the Application.

The landlord testified that he served the tenant with the 1 Month Notice on October 24, 2016 by posting it on the tenant's door. The tenant did not dispute the receipt of this notice. I find the tenant duly served with the 1 Month Notice, pursuant to section 88 and 90 of the *Act*.

### **Issues to be Decided**

Is the landlord entitled to an Order of Possession for cause?

Is the landlord entitled to recover the filing fee for this application from the tenant?

### **Background and Evidence**

This month to month tenancy began in July 2016 when the landlord purchased the property from the previous owner. There is no written tenancy agreement. The current rental amount is \$1,000.00 due on the first of each month. The landlord testified that the residence is his own; he lives upstairs and the tenant lives downstairs in the basement

suite. The tenant testified that prior to the purchase of the home he rented and occupied the entire house. The tenant testified that he was confused as to who the new landlord was as he was initially approached by a different person in July in regards to the tenancy. He believes that this person was the cousin of the current landlord.

The tenant testified that he did eventually meet the current landlord in July and has been paying rent to him in the amount of \$1,000.00 a month as agreed to on a verbal agreement. The tenant testified that initially the landlord told him that the lease would be up on August 31, 2016, but the arrangement subsequently changed to allow him to stay in the basement for \$1,000.00 a month, or upstairs for \$1,500.00 a month. The tenant has decided to remain in the basement suite for \$1,000.00 a month.

The landlord testified that he was the owner of the home, which he purchased in July 2016. He testified that he did agree to the new tenancy arrangement, but is now seeking to end the tenancy based on cause.

The landlord submitted the notice to end tenancy providing two grounds:

1. the tenant is repeatedly late in paying rent and
2. the tenant has engaged in illegal activity that has, or is likely to: damage the landlord's property, and/or adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.

The landlord testified that the tenant has been late on three occasions. August rent was paid on August 9, 2016, September rent was paid on September 22, 2016, and October rent was paid on October 7, 2016. The landlord submitted text messages in his evidence to support the request for the late payments. The tenant did not dispute the late payments, but did submit that he had valid reasons for the late payments of rent. The tenant testified that the landlord was difficult to get in touch with, and that extended to receiving his mail from the landlord. He testified that the September rent was extremely late due to him being extremely ill, and in the hospital. He testified that the landlord was aware of this.

The landlord provided written submissions and testified that the tenant has been extremely disrespectful towards himself and his family by blocking the door to the laundry room, occupying the majority of the space in the garage and driveway, using disrespectful words like "your (sic) full of bs" and "your (sic) not a nice person", as highlighted in the text messages submitted as evidence by the landlord. The landlord also testified that the tenant has, on multiple occasions, banged very loudly on the interior door that separates the two suites. No evidence of any damage was submitted by the landlord, but the landlord testified that there could be damage. The wife of the

landlord testified as a witness confirming the disrespectful words, the banging, and late payments of rent. The landlord submitted that the tenant has greatly disturbed his peace.

The tenant argued that he was the one being bullied by the landlord, and that the landlord did not use the laundry room that he was blocking with his bike. The tenant also submitted that the text messages submitted by the landlord were incomplete and only highlighted the landlord's side of the story. The tenant admitted to the loud banging, which was in response to his concern that the landlord may have been beating his own son. He testified that he and his wife were so concerned that they tried to look through a window to determine the noise upstairs. He admitted he has also banged on the door out of frustration.

### **Analysis**

Section 47 of the *Residential Tenancy Act* allows the landlord to end a tenancy for cause:

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

*(b) the tenant is repeatedly late paying rent;...*

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

*(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*

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

Although there is evidence that the tenant has disturbed the landlord and his family on a few occasions, and used language that could be considered disrespectful, I find the landlord has not met the burden of proof to justify that, on a balance of probabilities there is sufficient cause to end this tenancy on the grounds of damage to the property, or adversely affecting the quiet enjoyment, security, safety, or physical well-being of another occupant. There was no evidence supporting any damage caused by the tenant, and I am not satisfied that the landlord's quiet enjoyment, security, safety, or physical well-being was adversely affected.

The landlord also submitted evidence to support that the tenant has been late in paying his rent on three occasions. The tenant testified that he was seriously ill in September and was in the hospital, but he did not submit any doctor's notes or hospital records. Although the tenant did submit reasons why he was late with his rent payments, it is undisputed that the tenant has been late with his rent payments on three consecutive occasions. The repeated late rent payments meet the criteria for sufficient cause to end this tenancy under section 47(1)(b) of the *Act*. Therefore, I am granting the landlord's application to end this tenancy for cause.

As the landlord was successful in his application, the landlord is granted recovery of his filing fee.

### **Conclusion**

I find that the landlord's 1 month notice is valid and effective as of November 30, 2016.

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 provided with a formal copy of an order for a monetary award totaling \$100.00 for the recovery of his filing fee. The landlord is provided with this Order in the above terms and the tenant(s) must be served with **this Order** as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

**This Decision is final and binding on both parties.**

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 15, 2016

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Residential Tenancy Branch