



# 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* ("Act") for:

- an Order of Possession for cause pursuant to section 55; and
- recovery of the filing fees from the tenant.

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

The landlord testified that she personally served the tenant with the 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") dated November 7, 2016 on that date. The tenant confirmed receipt of the 1 Month Notice. I find that the tenant was served with the 1 Month Notice on November 7, 2016 in accordance with section 88 of the *Act*.

The landlord testified that she served the landlord's application for dispute resolution (the "Application") dated November 18, 2016 on that date by posting it on the rental unit door. The tenant confirmed receipt of the Application. I find that the tenant was served with the landlord's Application in accordance with section 89(2) of the *Act* on November 18, 2016.

At the outset of the hearing the landlord made a request to amend the Application by adding a claim for a monetary award for unpaid rent or utilities. The landlord testified that since the Application was filed the tenant has failed to pay the rent for November and December and that the rental arrears as of the date of the hearing is \$1,960.00. I decline to amend the landlord's Application to include a claim for a monetary award with leave to reapply. I do so as I find that the landlord has not served the tenant in accordance with Rule of Procedure 4.6 and adding a new head of claim without proper notice would be prejudicial to the tenant.

Issue(s) to be Decided

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

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

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the claims and my findings are set out below.

The parties agreed on the following facts. This is a month to month tenancy which began on or about October 19, 2016. The monthly rental amount is \$980.00. A security deposit of \$490.00 was paid by the tenant at the start of the tenancy and is still held by the landlord. The tenant continues to reside in the rental unit.

The tenant testified that the underlying reasons for the 1 Month Notice are inaccurate, incorrect and an overreaction by the landlord. The tenant testified that she had not filed a response to the 1 Month Notice as she had hoped that a settlement could be reached without this matter being adjudicated. The tenant stated that she finds the behavior of the landlord in taking this dispute before the Residential Tenancy Branch to be unreasonable, draconic and entirely out of proportion with the complaints.

Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant must, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch or the tenancy ends on the effective date of the 1 Month Notice. I accept the evidence of the parties that the tenant has not filed an application for dispute resolution within the allotted time in response to the landlord's 1 Month Notice.

Accordingly, I find that the tenant is conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy will end on the corrected effective date of the 1 Month Notice, December 31, 2016. I find that the 1 Month Notice complied with the form and content requirements of section 52 of the *Act*, and I accept the evidence of the parties that the 1 Month Notice was served in accordance with section 88 of the *Act*. Therefore, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain \$100.00 from the tenant's security deposit in satisfaction of the monetary award issued in the landlord's favour.

### Conclusion

I grant an Order of Possession to the landlord effective at **1:00 pm on December 31, 2016**. Should the tenant(s) or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary Order in the landlord's favour in the amount of \$100.00, which is to be implemented by the landlord's retention of this amount from the tenant's security deposit. I order that the value of the retained portion of the tenant's security deposit is decreased from \$490.00 to \$390.00.

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 28, 2016

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Residential Tenancy Branch