



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FF, O and OPC

### 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 47 of the *Act*;
- Recovery of the filing fee from the tenant pursuant to section 72 of the *Act*; and
- Other unspecified orders.

The landlord, DZ, ("landlord"), the building manager, LS, and front desk clerk, RE, appeared at the hearing on behalf of the named Applicant. The tenant, CT, attended the hearing, along with her advocate, BC, (the "advocate") and her social worker, AA. The tenant stated that she wished for her advocate to speak on her behalf. Both parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that he was appointed by the Applicant to speak on the Applicant's behalf, to make decisions and to represent the Applicant at the hearing.

The tenant denied that she was served by with the 1 Month Notice to End Tenancy for Cause ("1 Month Notice"). The landlord testified that the 1 Month Notice was posted on the door of the rental unit on November 14, 2016. The deemed service date for this 1 Month Notice is November 17, 2016. The landlord argued the 1 Month Notice was received by the tenant because she threw a copy of the notice at the witness, RE. RE gave sworn testimony to confirm this fact. The landlord explained that great care was taken to serve this document in a manner pursuant to section 88 of the *Act* because the Applicant had failed in a previous attempt to secure an Order of Possession at an October 28, 2016 hearing due to lack of proper service.

Policy Guideline #12 of the *Residential Tenancy Policy Guidelines* notes that when a notice is attached to a door, "the person attaching the document should make sure that the door belongs to the person's residence, and that the document will be readily seen by the person entering or leaving the residence."

Based on the landlord and RE's testimony, and the proof of service document dated November 14, 2016 and signed by LS, I am satisfied that the tenant was served the 1 Month Notice in accordance with section 88 and 90 of the *Act*.

The landlord's Application for Dispute Resolution and Evidentiary Package ("application for dispute resolution") was hand delivered to the tenant on December 12, 2016. The tenant acknowledged receipt of this package on December 12, 2016. In accordance with sections 88 and 89 of the *Act*, I find that the tenant was duly served with the landlord's application for dispute resolution package.

#### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to recover the filing fee from the tenant?

#### Background and Evidence

The landlord testified that this tenancy began on July 1, 2016. Monthly rent is currently \$575.00. A security deposit of \$225.00 was paid and continues to be held by the landlord.

The landlord and witness RE explained that a 1 Month Notice to End Tenancy for Cause was issued to the tenant because of on-going issues they have had in the building as a result of her activities. The landlord issued a 1 Month Notice on November 14, 2016 citing the following:

*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 seriously jeopardized the health and safety or lawful right of another occupant or the landlord.*

During his testimony, RE explained that he is employed as front desk clerk at the property identified in the dispute resolution package. He stated that he works 4 nights per week from midnight to 8 A.M. During the course of his shift, RE said that he tours the building once per hour and regularly takes note of any suspicious activity related to the unit in question. Specifically, he testified that he witnessed drug exchanges take place at the door of the rental unit. He has spoken to guests of the unit in question who have informed him that they were consuming drugs purchased in the tenant's unit. He also observed numerous guests coming in and out of the building asking for the tenant,

looking to gain access to the tenant's unit and then engaging in the consumption of heroin and crystal meth in the building's common bathroom and hallway.

#### Analysis

Based on the above testimony, I am satisfied that the 1 Month Notice issued pursuant to section 47 of the *Act* has met the burden of proof based on the balance of probabilities needed to establish cause.

Furthermore, section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. I find that the tenant has failed to file her application for dispute resolution within the ten days of service granted under section 47(4) of the *Act*. Accordingly, I find that the tenant is conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 1 Month Notice, December 31, 2016.

I am therefore issuing an Order of Possession to the landlord effective 2 days after service on the tenant.

#### Conclusion

The landlord is granted an Order of Possession to be effective 2 days after service on the tenant. The landlord is provided with formal Orders in the above terms. Should the tenant fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

As the landlord was successful in his claim, the landlord is entitled, pursuant to section 72 of the *Act* to withhold \$100.00 from the tenant's security deposit as compensation for his filing fee. The balance of the security deposit must be dealt with in accordance with the *Act*.

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 20, 2017

