



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OPC, FF

### Introduction

This hearing was scheduled to consider cross-applications pursuant to the *Residential Tenancy Act* (the “*Act*”).

The tenant seeks:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the “1 Month Notice”) pursuant to section 47; and
- recovery of the filing fees for this application from the landlord pursuant to section 72.

The landlord seeks:

- an Order of Possession for cause pursuant to section 55; and
- recovery of the filing fees for this application from the tenant pursuant to section 72.

The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant did not attend this hearing, which lasted approximately 15 minutes. Therefore, as the applicant did not attend the hearing, and the respondent appeared and was ready to proceed, I dismiss the tenant's claim without leave to reapply.

The landlord testified that she personally served the tenant with the 1 Month Notice dated November 25, 2016 on November 27, 2016. The effective date by which this 1 Month Notice was to take effect was December 31, 2016. In accordance with section 88 of the *Act*, I find that the tenant was served with the 1 Month Notice on November 27, 2016.

The landlord confirmed receipt of the tenant's application for dispute resolution dated November 28, 2016, on or about that date by registered mail. I find that the landlord was duly served with the tenant's application in accordance with section 89 of the *Act*.

The landlord testified that she served the landlord's application for dispute resolution dated December 14, 2016 on the tenant on December 22, 2016 by registered mail. She provided a Canada Post tracking number in support. I find that the tenant was served with the application for dispute resolution in accordance with section 89(2) of the *Act* on December 27, 2016 five days after mailing.

#### Issue(s) to be Decided

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

Is the landlord entitled to recovery of filing fees for the application from the tenant?

#### Background and Evidence

The landlord provided undisputed testimony regarding the following facts. This month to month tenancy began in January, 2015. The current rent is \$800.00 payable on the 1<sup>st</sup> of the month. A security deposit of \$400.00 was paid by the tenant at the commencement of the tenancy and still held by the landlord. The tenant continues to reside in the rental unit.

The landlord submitted into evidence the written tenancy agreement dated January 1, 2015 signed by both the landlord and tenant. The addendum to the tenancy agreement includes at paragraph 9 the term "The Tenant(s) agree that there will be absolutely no smoking of any substance in the house or on this premise". The term is initialled by the tenant. The landlord submitted into evidence a written statement from a plumber who entered the rental unit and found the premises to have the distinct pungent odor of cigarettes and marijuana smoke. The landlord testified that she inspected the rental unit and found that it smells of smoke. She believes that the tenant is smoking in the premises. The landlord submitted into evidence a written warning issued to the tenant regarding the violation of the tenancy term.

#### Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. I am satisfied that the form and content of the landlord's 1 Month Notice complies with section 52 of the *Act* and was served in accordance with section 88 of the *Act*. I accept

the landlord's evidence that the tenant has breached a material term of the tenancy by smoking or allowing smoking in the rental unit.

As I have dismissed the tenant's application to dispute the 1 Month Notice I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*. As the effective date of the 1 Month Notice has passed, I issue a 2 day Order of Possession.

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 \$400.00 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 **2 days after service on the tenant(s)**. 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.

The tenant's application is dismissed without leave to reapply.

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 6, 2017

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Residential Tenancy Branch