



# 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 an Application for Dispute Resolution (the “Application”) filed by the Landlord under the *Residential Tenancy Act* (the “Act”), for a Monetary Order for the recovery of the filing fee, and for an Order of Possession.

The hearing was convened by telephone conference call and was attended by the agent for the Landlord (the “Agent”), who provided affirmed testimony. The Tenants did not attend. The Agent was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure state that the respondent must be served with a copy of the Application and Notice of Hearing. As the Tenants did not attend the hearing, I confirmed service of documents as explained below.

The Agent testified that the Application and Notice of Hearing were personally served on the Tenants on August 28, 2017. As a result, I find that the Tenants were duly served on August 28, 2017, the date the documents were personally served on them.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Preliminary Matters

As stated above, the Tenants did not attend the hearing, which proceeded in their absence as the Landlord attended at the appointed time, ready to proceed. After concluding the hearing, I determined that further information was required from the Landlord regarding the service of the Application and Notice of Hearing on the Tenants. As a result, the Landlord was called back into the hearing so that I could confirm that the Tenants had been served the Application and the Notice of Hearing in accordance with the *Act* and the Rules of Procedure.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for cause pursuant to sections 47 and 55 of the *Act*?

Is the landlord entitled to monetary compensation to recover the filing fee pursuant to section 72 of the *Act*?

### Background and Evidence

In the hearing the Agent testified that the month to month tenancy with the above named Tenants began on April 1, 2015, and that rent in the amount of \$613.00 is due on the first day of each month. A Tenancy agreement was also submitted by the Agent.

The Agent testified in the hearing that the Tenants reside in a townhouse which forms part of a 26 unit subsidised housing complex. The Agent testified that the Tenants and their guests are consistently disturbing other tenants in the complex with loud partying, fighting, loud music, and the attendance of the RCMP. The Agent stated that although the Tenants live in a self-contained townhouse, they and their guests are often fighting and causing disturbances outside late at night, and playing music so loudly that it can be heard in the other townhouses on the cul-de-sac. As a result, the Agent testified that the other tenants of the complex are consistently being disturbed.

As a result of the above, the Agent testified that a One Month notice to End Tenancy for Cause (the "One Month Notice") was served on the Tenants. The One Month Notice, dated August 15, 2017, gives the following reasons for ending the tenancy:

- Tenant or person permitted on the property by the tenant has:
  - Significantly interfered with or unreasonably disturbed another occupant or the landlord; or
  - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord; or
  - Put the landlord's property at significant risk.

The One Month Notice also stated that the Tenants had 10 days from the date they received the notice to file an Application for Dispute Resolution or they would be presumed to have accepted that the tenancy ends on the effective date of the notice.

### Analysis

Section 47 of the *Act* states the following with regards to a Notice to End Tenancy for cause:

#### **Landlord's notice: cause**

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

(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, or
  - (iii) put the landlord's property at significant risk;
- (2) A notice under this section must end the tenancy effective on a date that is
  - (a) not earlier than one month after the date the notice is received, and
  - (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.
- (3) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].
- (4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.
- (5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant
  - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
  - (b) must vacate the rental unit by that date.

I have reviewed all relevant documentary evidence and oral testimony and in accordance with section 88 of the *Act*, I find that the Tenants were served with the One Month Notice on August 15, 2017, the day it was personally served on them.

As there is no evidence before me to the contrary, I find that the Tenants did not dispute the One Month Notice within that 10 day period granted under section 47(4) of the *Act* and I therefore find that the Tenants are conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ended on September 30, 2017, the effective date of the One Month Notice.

As a result, I find that the Landlord is entitled to an Order of Possession. As the effective date of the One Month Notice has passed, the Order of Possession is effective two days after service on the Tenants.

Pursuant to section 72 of the *Act*, I also find that the Landlord is entitled to retain from the security deposit paid by the Tenants, \$100.00 for the recovery of the filing fee. The balance of the security deposit is to be dealt with in accordance with the *Act*.

### Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenants. The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$100.00, which the Landlord is entitled to retain from the security deposit paid by the Tenants.

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: October 2, 2017

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Residential Tenancy Branch