



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding AQUILINI PROPERTIES LP  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes          OPC, FF

### Introduction

This hearing was scheduled to consider the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") seeking:

- 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.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, and to call witnesses. The corporate landlord was represented by its agent IK (the "landlord"). The tenant represented herself with the aid of her advocate.

### Preliminary Issue – Service

The landlord testified that he served the tenant with a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") dated June 24, 2017 personally on the tenant on that date. The landlord said that he served the 1 Month Notice at the tenant's rental unit in the presence of a witness. The witness attended the hearing and testified that he was present on June 24, 2017 when the tenant was served. The tenant disputed that she was served with the 1 Month Notice on that date.

The landlord testified that the tenant was personally served with the landlord's application for dispute resolution dated July 31, 2017 on August 2, 2017. The tenant confirmed receipt of the application package on that date. The tenant testified that she was not previously served with the 1 Month Notice and the first time she received it was on August 2, 2017.

As the landlord and tenant gave disputing testimonies about service of the 1 Month Notice I first turn to a determination of credibility. Taken in totality I find the landlord's version of events to be more credible than the tenant. The landlord's testimony that the 1 Month Notice was served on the tenant was corroborated by a witness. The landlord's testimony was consistent and

forthright. While the tenant eventually testified that the first time she was served with the 1 Month Notice was on August 2, 2017, she submitted into written evidence a written statement where she states that she was served on July 31, 2017. During the hearing the tenant initially stated that she was served on July 31, 2017 as she wrote in her submissions but subsequently stated that the date of service was August 2, 2017. Taken in its totality I find the landlord's evidence that the 1 Month Notice was personally served on June 24, 2017 and application package served on August 2, 2017 to be more convincing. Accordingly, I find that the tenant was served with the landlord's 1 Month Notice in accordance with section 88 on June 24, 2017 and served with the landlord's application for dispute resolution in accordance with section 89 on August 2, 2017.

#### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession on the basis of the 1 Month Notice?  
Is the landlord entitled to recovery of the filing fees from the tenants?

#### 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 claim and my findings are set out below.

The parties agreed on the following facts. This is a periodic tenancy with monthly rent of \$856.00. A security deposit of \$412.50 was paid by the tenant at the start of the tenancy and is currently held by the landlord. The tenant continues to occupy the rental unit.

The tenant testified that they did not file an application for dispute resolution in response to the 1 Month Notice. The tenant said that the landlord has failed to sufficiently explain the reasons the landlord was seeking to end tenancy. The tenant said that she believes the primary issues for ending tenancy involve a dog that she was caring for a time but the dog no longer resides in the rental unit.

#### Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within 10 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 an application for dispute resolution within the 10 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 corrected effective date of the 1 Month Notice, July 31, 2017.

I find that the landlord's 1 Month Notice meets the form and content requirements of section 52 of the *Act* as it is in the approved form and clearly identifies the parties, the address of the rental

unit and the effective date of the notice. Therefore, 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 of the tenant's \$412.50 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.

I order the landlord to retain \$100.00 from the tenants' security deposit to recover the landlord's filing fee for this application. I order that the retained value of the security deposit is reduced from \$412.50 to \$312.50.

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 16, 2017

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Residential Tenancy Branch