



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC FF

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held on October 16, 2017. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession based on a One Month Notice to End Tenancy for Cause; and,
- to recover the filing fee from the tenant for the cost of this application.

The Landlord and the Tenant both attended the hearing and provided affirmed testimony. Neither party raised any issues with respect to service of the application and the Notice of Hearing.

All parties were given a full opportunity to be heard, to present evidence and to make submissions. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue to be Decided

- Is the landlord entitled to an order of possession under the *Act*?
- Is the landlord entitled to recover the filing fee from the tenant for the cost of this application?

### Background and Evidence

The Landlord testified that he served the tenant with a One Month Notice to End Tenancy for Cause (the Notice), by posting a copy to the door of the rental unit on July

31, 2017. He also provided a copy of this Notice, along with a photograph of it posted to the door of the rental unit. In this photograph, the particulars of the Notice are clearly legible and it was signed, and delivered on June 28, 2017, with an effective date of July 31, 2017. The Landlord stated that service of the Notice was witnessed by a third party. On the Notice, the Landlord selected 5 different reasons for ending the tenancy.

The Landlord stated that rent is set at \$650.00, and is due on the first day of the month. The Landlord stated that there was supposed to be a security deposit in the amount of \$350.00 but he never received it.

The Tenant initially testified that she got the Notice a couple of days after the Landlord posted it to her door, although she could not provide an exact date. Later she stated that she never got the Notice and that it was not posted to her door. She also stated only got a copy of the Landlord's Application for Dispute Resolution when that was posted to her door. The Tenant stated that she did not dispute the Notice by filing an application for review. The Tenant further stated that she is caught up with her rent payments, and does not owe any money for rent at this time.

### Analysis

Based on the affirmed testimony and documentary evidence, and on a balance of probabilities, I find:

After reviewing the documentary evidence, including the Notice and the photo of the Notice, I am satisfied that it complies with section 52 of the *Act* [*form and content of notice to end tenancy*]. Section 47 of the *Act* permits a landlord to end a tenancy for cause. A tenant who receives a notice to end tenancy for cause has 10 days after receipt to dispute it by making an application for dispute resolution. Failure to dispute the notice to end tenancy for cause in this period results in the conclusive presumption that the tenant has accepted the end of the tenancy, under section 47(5) of the *Act*.

In this case, the Landlord testified at the hearing that he posted a copy of the Notice to the door of the rental unit on July 31, 2017. As I did not have a copy of the Notice at the time of the hearing, the Landlord was allowed to submit a copy of this document after the hearing concluded. Subsequently, the Landlord provided a copy of the Notice, as well as a photograph of him posting it to the door of the unit. The Notice indicates that it was posted to the door on June 28, 2017, with an effective date of July 31, 2017.

I note that, during the hearing, the Tenant initially said she got the Notice, and then stated she never got the Notice and that it wasn't posted to her door. In contrast to this, the Landlord says he posted it to the Tenant's door, and served it in accordance with the *Act*. The Landlord stated he had a third party witness him posting the Notice to the

door of the rental unit. The Landlord also provided a photo of the Notice being posted to the door. When weighing the evidence on this matter, I find the Landlord has provided more detailed and compelling evidence on this matter. I find it more likely than not that he attached a copy of the Notice to the door of the rental unit.

After further reviewing the evidence before me, and considering the information contained on the actual notice that was posted to the door, I find the Landlord likely made an inadvertent error during the hearing when he said he posted it on July 31, 2017, rather than June 28, 2017. It is clear on the Notice that July 31, 2017, was the effective date of the Notice, and that June 28, 2017, was the day it was signed and posted to the door.

In summary, I am satisfied that the Landlord served the tenant with the Notice, by posting a copy to the door of the rental unit on June 28, 2017. I turn to sections 88 and 90 of the *Act*, which specify that documents served in this manner are deemed to be received 3 days later. I find the tenant received the Notice on July 1, 2017.

The tenant had 10 days, until July 11, 2017, to dispute the Notice, but did not do so. Accordingly, pursuant to section 47(5) of the *Act*, I find the tenant is conclusively presumed to have accepted the end of the tenancy on the effective date of the Notice.

Given that the Tenant has already paid rent for the current month, I grant an order of possession effective **October 31, 2017**, at 1:00 p.m. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court. Further, if the Tenant has already paid for rent beyond the current month, then this money should be returned to the Tenant.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was successful in this hearing, I order the tenant to repay the \$100.00 fee the Landlord paid to make the application for dispute resolution. I find the landlord is entitled to a monetary order in the amount of \$100.00.

### Conclusion

The landlord is granted an order of possession effective **October 31, 2017**, at 1:00 p.m. This order must be served on the tenants. If the tenant fails to comply with this order

the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The landlord is granted a monetary order in the amount of **\$100.00** for the cost of filing this application. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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