



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

OPC, PSF, OLC, CNC, FF

### Introduction

This was a cross-application hearing.

On October 11, 2017 the landlord applied seeking an order of possession based on cause and to recover the filing fee costs from the tenants.

On October 6, 2017 the tenants applied to cancel the Notice ending tenancy for cause issued on September 30, 2017, an order the landlord comply with the Act and an order the landlord provide services or facilities required by law and to recover the filing fee cost from the landlord.

The landlord provided affirmed testimony that on October 14, 2017 copies of the Application for Dispute Resolution and Notice of Hearing were sent to each tenant via registered mail at the address noted on the Application. A Canada Post tracking number and receipt was provided as evidence of service to each of the two tenants named in the application.

The landlord said the mail was not returned.

Therefore, I find that these documents are deemed to have been served no later than the 5<sup>th</sup> day after mailing, in accordance with section 89 and 90 of the Act.

The tenants did not appear at the hearing.

### Preliminary Matters

The tenants applied to dispute the Notice ending tenancy. As the tenants did not attend the hearing at the scheduled start time the hearing proceeded,

### Issue(s) to be Decided

Is the landlord entitled to an order of possession based on the one month Notice ending tenancy for cause issued on September 30, 2017?

### Background and Evidence

The tenancy commenced on May 1, 2014. Rent is \$900.00 per month due on the first day of each month. Tenants J.V. and E.C. signed the tenancy agreement supplied as evidence. The landlord is holding a security deposit in the sum of \$450.00.

On September 30, 2017 the landlord issued a one month Notice to end tenancy for cause. The landlord submitted a proof of service document. The Notice was personally served on September 30, 2017 to tenant J.V. at 10 or 11 a.m., with a witness present. The tenant signed the proof of service, confirming receipt of the Notice. The Notice required the tenants to vacate the rental unit on October 31, 2017.

The reasons stated for the Notice to End Tenancy were that the tenants have been repeatedly late paying rent; seriously jeopardized the health or safety or lawful interest of another occupant or the landlord; that the tenants have put the landlord's property at significant risk; that the tenants have engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or well-being of another occupant and to damage the property.

The tenants disputed the Notice ending tenancy. After 14 minutes the tenants had not entered the conference call hearing to support their application.

The landlord said the tenants remain in the rental unit and have not paid November 2017 rent.

### Analysis

I find that the tenants received the Notice ending tenancy on September 30, 2017; the date the tenant signed confirming receipt.

As the tenants received this Notice on September 30, 2017, I find that the earliest effective date of the Notice is October 1, 2017.

In the absence of evidence to the contrary, I find that the tenants were served with a Notice ending tenancy that required the tenants to vacate the rental unit on October 31, 2017, pursuant to section 47(5) of the Act.

Section 47(5) of the Act stipulates that a tenant has 10 days from the date of receiving the Notice ending tenancy to file an Application for Dispute Resolution to dispute the Notice. The tenants disputed the Notice but did not attend the hearing in support of their application. Therefore, I find that the tenants' application is dismissed.

Therefore, pursuant to section 47(5) of the Act, I find that the tenants have accepted that the tenancy has ended on the effective date of the Notice; October 31, 2017.

Section 55(1) of the Act provides:

**55** (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*

*(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*

*(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

Therefore, as the tenants' application is dismissed I find pursuant to section 55(1) of the Act that the landlord must be issued an order of possession.

As the landlords' claim has merit I find, pursuant to section 72 of the Act that the landlord is entitled to recover the \$100.00 filing fee from the tenants for the cost of this Application for Dispute Resolution. The landlord agreed to a deduction from the security deposit equivalent to the filing fee cost. Therefore, pursuant to section 72(2) of the Act I find that the landlord may retain \$100.00 of the \$450.00 security deposit. The landlord will now hold a security deposit in the sum of \$350.00 plus any accrued interest.

The landlord has been granted an Order of possession that is effective two days after service to the tenants. This Order may be served on the tenants, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

### Conclusion

The tenants' application is dismissed.

The landlord is entitled to an order of possession.

The landlord may retain \$100.00 of the security deposit in satisfaction of the filing fee cost.

This decision is final and binding and 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: November 14, 2017

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Residential Tenancy Branch