



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPC, FFL

### Introduction

This hearing dealt with the landlord's application pursuant to the Residential Tenancy Act (the *Act*) for:

- an Order of Possession for Cause, pursuant to sections 47 and 55 of the *Act*, and
- recovery of the filing fee from the tenant pursuant to section 72 of the *Act*.

Both the landlords and the tenant attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord L.L. (herein referred to as "the landlord") spoke on behalf of the landlords.

As both parties were present, service of documents was confirmed. The landlord gave sworn testimony that the One Month Notice to End Tenancy for Cause was served personally to the tenant on February 28, 2018, which was confirmed by the tenant. The landlord stated that the Notice of Dispute Resolution Proceeding package, including all submitted evidence, was served personally to the tenant on March 14, 2018.

The tenant testified that she was in receipt of the Notice of Dispute Resolution Proceeding package and associated evidentiary materials, but was uncertain as to the date when she was personally served with the materials. The tenant stated that she believed she had received it when she was served with the One Month Notice on February 28, 2018, but when I advised her that this was the package with information pertaining to this hearing, she acknowledged that she was not sure of the date. Given that the tenant confirmed that she was in receipt of the One Month Notice and the Notice of Dispute Resolution Proceeding package, including all submitted evidence, and that she was unclear of the date when she received the proceeding package although

speculated that it was a date earlier than that stated by the landlord, I find that the tenant was served the above documents in accordance with sections 88 & 89 of the *Act*.

Following opening remarks, the landlord requested to amend her application to exclude her request for the recovery of the filing fee from the tenant. As the tenant would not be prejudiced by this change, pursuant to section 64(3)(c) of the *Act*, the landlord's application is amended to no longer include a request for the recovery of the filing fee from the tenant.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession for cause?

### Background and Evidence

According to the terms of the written tenancy agreement submitted into evidence by the landlord and confirmed by the tenant at the hearing, this is a month-to-month tenancy which began on December 20, 2017. Rent in the amount of \$800.00 is due on the 20<sup>th</sup> day of each month. In addition, the tenant is responsible to pay a ¼ share of the utilities, which are listed as: water, sewer, garbage collection, electricity and heat.

The landlord confirmed that a security deposit of \$400.00 was paid by the tenant at the beginning of the tenancy and continues to be held by the landlord.

The landlord testified that her application for an Order of Possession for Cause is related to the tenant's repeated late payment of rent. The landlord submitted into evidence three 10 Day Notices to End Tenancy for Unpaid Rent which were served on the tenant for the months of December 2017, January 2018 and February 2018. The landlord has submitted into evidence receipts documenting the dates that rent payments were received by the tenant as proof of the late payments.

The landlord also submitted into evidence a copy of a One Month Notice to End Tenancy for Cause issued by the landlord on February 28, 2018 with an effective vacancy date of April 19, 2018 citing the tenant was repeatedly late paying rent. The Notice included an attached explanation of the late payment history. The parties agreed the landlord served the One Month Notice on February 28, 2018 to the tenant personally.

The tenant did not submit any documentary evidence but testified to that fact that she agreed with the testimony provided by the landlord regarding the late payments of rent. The tenant explained that she had been going through a difficult time financially since December 2017 as she had lost her job and subsequently found employment for which she only received daily pay. The tenant stated that she was not aware that she could have disputed the One Month Notice and thought that all she was required to do was pay the rent that was owing within five days of receiving the notice.

During the hearing, I reviewed with the tenant the One Month Notice which she had available to her, and specifically referenced the check boxes providing the reasons for the notice to end tenancy, which are printed on the top half of page two of the notice. The tenant acknowledged that the check box for "Tenant is repeatedly late paying rent" was marked off. I further referred the tenant to the bottom half of page two of the notice and the heading "INFORMATION FOR TENANTS" where it is stated that the tenant has the right to dispute the notice within 10 days of receiving it.

### Analysis

In considering this matter, I have reviewed the landlord's One Month Notice to ensure that the landlord has complied with the requirements of section 52 of the *Act*. I find that the One Month Notice complies with the form and content requirements of section 52 of the *Act* as it is signed and dated by the landlord; provides the address of the rental unit; states the effective date of the notice; and explains the grounds for the tenancy to end.

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. Although the tenant confirmed that she was in receipt of both pages of the One Month Notice form, she stated that she did not know that she could dispute the notice and believed that she was only required to pay her rent within five days of receiving the notice in order to avoid the consequences of the notice.

I note that the bottom half of the second page of the One Month Notice to End Tenancy includes specific instructions to tenants should they wish to dispute such a Notice. I am not persuaded by the tenant's testimony that while the second page of the Notice included the check boxes for all causes to end the tenancy, including repeated late payment of rent, that the landlord would have removed the information about how to dispute the Notice.

I find that the tenant has failed to file an application for dispute resolution within 10 days of service as 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 will end on the stated effective date of the One Month Notice, which is April 19, 2018.

I am therefore issuing an Order of Possession to the landlord to be effective on or after April 19, 2018.

#### Conclusion

I grant an Order of Possession to the landlord to be served on the tenant and to be effective on or after April 19, 2018. Should the tenant 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.

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: April 17, 2018

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Residential Tenancy Branch