



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes

OPC MND FF

### 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 section 55; a monetary order for damage pursuant to section 67; and authorization to recover the filing fee for this application pursuant to section 72.

The tenant did not attend this hearing, although I waited until 9:54 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:30 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions. The landlord submitted that he was prepared with two witnesses to attend the hearing if necessary to provide information about noise complaints to the rental unit. The witness testimony was not required.

At the outset of the hearing, the landlord was advised that the monetary portion of his application would be dismissed with leave to reapply. Based on the evidence provided by the landlord at this hearing, I find that his application for a monetary order for damage to the rental unit is premature. The landlord has not had access to the rental unit (the tenant has not yet vacated the unit). Therefore, the landlord has not been able to acquire estimates or invoices for clean up or repairs to the rental unit. The landlord proceeded with his application for an Order of Possession and recovery of his filing fee.

The landlord testified that he served the tenant with the 1 Month Notice to End Tenancy for Cause ("1 Month Notice") on January 16, 2018 by posting the notice on the tenant's door. The landlord provided sworn testimony that the tenant was residing in the rental unit as of January 16, 2018 and that, to the best of his knowledge, she continues to reside in the rental unit. Pursuant to section 88 and 90 of the Act, the tenant was deemed served with the 1 Month Notice on January 19, 2018 (3 days after its posting). The landlord also testified that he posted his Application for Dispute Resolution (including notice of this hearing date) to the tenant's door on February 13, 2018. He testified that he has spoken to the tenant since he provided her with the Application for Dispute Resolution and that she told him she would attend the hearing. In

accordance with section 89(2) and 90 of the Act, I find that the tenant was deemed served with the landlord's Application for Dispute Resolution on February 16, 2018 (3 days after its posting).

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for Cause?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

This tenancy began on April 20, 2012 as a one year fixed term tenancy. The tenancy has continued month to month with a current rental amount of \$1245.60 payable on the 1st of each month. The landlord testified that the tenant has no rental arrears. The landlord testified that he continued to hold the \$500.00 security deposit paid by the tenant prior to the outset of the tenancy.

The landlord entered into written evidence a copy of his 1 Month Notice to End Tenancy for Cause. In that 1 Month Notice, requiring the tenant to end this tenancy by February 28, 2018, the landlord cited the following reasons for the issuance of the Notice:

*Tenant or a person permitted on the property by the tenant has:*

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
- *put the landlord's property at significant risk.*

*Tenant has engaged in illegal activity that has, or is likely to:*

- *damage the landlord's property;*
- *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;*
- *jeopardize a lawful right or interest of another occupant or the landlord.*

*Tenant has caused extraordinary damage to the unit/site or property.*

*Tenant has failed to make required repairs to the rental unit.*

*Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

The landlord testified that the tenant has a number of cats and dogs living in the rental unit in breach of the terms of her tenancy agreement. He testified that she did not pay a pet damage deposit. The landlord testified that the front entrance door to the rental unit is significantly damaged since the start of this tenancy. The landlord was uncertain as to the reason for the damage to the door but he submitted photographs to show substantial damage. The landlord

testified that the police regularly attend to the rental unit and that, on one occasion, the police arrested the tenant at the residence. The landlord testified that the police have also been called by the neighbours beside the tenant in the duplex rental premises as well as by the neighbours in the next property over.

The landlord testified that he receives regular complaints of noise from the tenant's rental unit including: pounding on walls and the floor at all hours; people arguing/fighting; people screaming; and other loud sounds. As well, the landlord testifies that he receives complaints that the tenant leaves garbage piled up on the common property. The landlord testified, supported by his documentary submissions showing correspondence with the tenant advising her of the complaints and warning her that she must cease to make unreasonable noise. He provided evidence documenting the complaints from the tenant's neighbours and testified that he is contacted at least two times a week regarding noise, police presence and other disturbances by the tenant.

The landlord sought an Order of Possession for Cause (particularly arguing that the *tenant or persons permitted on the property by the tenant have significantly interfered with or unreasonably disturbed another occupant or the landlord*). The tenant has not applied to cancel the Notice to End Tenancy. Despite my finding that the tenant was sufficiently served and therefore aware of this hearing, the tenant did not attend this hearing to dispute the notice.

The landlord also applied to recover the \$100.00 filing fee for this application.

### Analysis

I accept the undisputed evidence of the landlord that the tenant has caused significant interference to the other occupants in the rental unit. I find that the tenant or her guests to the rental unit have unreasonably disturbed her neighbour within the duplex as well as her neighbours in the larger neighbourhood (other buildings in the area). I accept the evidence, provided in a clear, candid and organized manner to show that the neighbours complained regularly of noise to the rental unit over the past 8 months of the tenancy. The landlord's testimony is supported by his documentary evidence.

Based on the landlord's undisputed evidence, I am satisfied that the landlord had sufficient grounds to issue the 1 Month Notice and obtain an end to this tenancy for cause. I find that the landlord's 1 Month Notice is correct in both content and form in accordance with section 52 of the Act. The tenant has not made application to dispute the 1 Month Notice pursuant to section 47(4) of the Act within ten days of receiving it. In accordance with section 47(5) of the Act, the tenant's failure to take this action within ten days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by February 28, 2018. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession.

As the landlord was successful in this application for an Order of Possession, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

I grant the landlord an Order of Possession to be effective two days after notice is served to the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I issue a monetary order to the landlord in the amount of \$100.00.

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: April 20, 2018

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Residential Tenancy Branch