



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC

### Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on May 2, 2018, wherein the Landlord sought an Order of Possession based on a 1 Month Notice to End Tenancy for Cause issued on March 9, 2018 (the "Notice").

The hearing was conducted by teleconference on June 25, 2018. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, 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 based on the Notice?

### Background and Evidence

The Landlord's Project Manager, C.M., testified as follows. She confirmed that this tenancy began November 26, 2014.

C.M. testified that the reason the Landlord wishes to end the tenancy is because the Tenant has allowed her guest, D.C., in the rental property, and D.C. in turn has been violent with other residents, including robbing two of them and most recently assaulting a staff member.

C.M. stated that the Tenant is aware that D.C. is not permitted on the premises. C.M. further stated that it was their hope that the Tenant would agree not to allow him at the rental property, yet she continues to allow him, and others unauthorized access to the rental unit.

The Landlord in evidence a letter dated, April 26, 2018, wherein the following incidents are detailed:

- On November 6, 2017 the Tenant allowed people to enter via the fire escape stairwell and they robbed another resident.
- On December 10, 2017 the Tenant gave access to D.C. and another man who, while in possession of a firearm, committed a robbery of another resident.

The Tenant was served the Notice on March 9, 2018 by posting to the rental unit door.

The reasons cited on the Notice are as follows:

- the Tenant or a person permitted on the residential property by the Tenant has
  - significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, and,
  - seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant,
- the Tenant has engaged in illegal activity that has caused or is likely to
  - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
  - jeopardize a lawful right or interest of another occupant or the landlord;

The Notice informed the Tenant she had 10 days in which to make an application to dispute the Notice. The Landlord confirmed the Tenant failed to make an application to dispute the notice.

The Landlord's representative also testified that since issuing the Notice, the Tenant's guest, C.M. assaulted a staff member by pushing them down the stairs of the rental building and stepping on the staff member while they lay on the ground.

The Tenant also testified. She confirmed that she received the Notice on March 9, 2018. Initially she claimed that she did not make an application because she could not get in touch with her advocate. Later she claimed that she tried to make an application but the person with whom she spoke at the residential tenancy branch was on holidays. The Tenant did not respond to the allegations regarding C.M.

### Analysis

After consideration of the evidence and testimony before me and on a balance of probabilities I find as follows.

I find that the Tenant was served with the Notice by posting to the rental unit door on March 9, 2018. Section 90 of the *Act* provides that documents served in this way are deemed served three days later; as such I find that the Tenant was served the Notice as of March 12, 2018.

The Notice informed the Tenant that she had 10 days in which to apply to dispute the notice; the Tenant failed to do so.

Section 47(5) of the *Act* provides as follow:

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

The conclusive presumption in section 47(5) is non rebuttable. As such, I find that the Tenant has accepted the end of the tenancy and must vacate the rental unit in accordance with the *Notice*.

Although not necessary, I also find that the Landlord has established cause to end this tenancy. The allegations concerning the Tenant's friend, D.M., are very concerning. A tenant is responsible for the behaviour of their guests and physical violence and criminal activity against fellow residents and staff of a rental building are entirely unacceptable.

### Conclusion

The Landlord is granted an Order of Possession pursuant to sections 47 and 55 of the *Act*. This Order must be served on the Tenant and may be filed and enforced in the B.C. Supreme 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: June 25, 2018

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Residential Tenancy Branch