



# 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 an Application for Dispute Resolution by the Landlord filed under the Residential Tenancy Act, (the “Act”) to enforce a One-Month Notice to End Tenancy for Cause, (the “Notice”) dated October 15, 2018, and to recover the filing fee for this application. The matter was set for a conference call.

The Landlord, his Translator, and his Agent (the “Landlord”) attended the hearing and were each affirmed to be truthful in their testimony. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing documentation was considered. Section 59 of the *Act* and the Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified the Application for Dispute Resolution, and Notice of Hearing documents had been sent to the Tenant by registered mail on November 7, 2018, a Canada post tracking number was provided as evidence of service. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received five days later. I find that the Tenant had been duly served in accordance with the Act.

The Landlord was provided with the opportunity to present her evidence orally and in written and documentary form, and to make submissions at the hearing.

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

### Issues to be Decided

- Is the Landlord entitled to an order of possession, pursuant to section 47 of the *Act*?
- Is the Landlord entitled to the recovery of the filing fee for this application?

### Background and Evidence

The Landlord testified that he served the Notice to the Tenant by registered mail on October 15, 2018, a Canada post tracking number was provided as evidence of service. The Notice indicated an end of tenancy date of November 30, 2018.

The Landlord testified that the Tenant had not served him with a copy of an Application to Dispute the Notice or Notice of Hearing documentation.

The Landlord testified that the Tenant had not moved out in accordance with the Notice and that he is seeking an order of possession.

### Analysis

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities:

Section 47 of the *Act* requires that upon receipt of a Notice to End Tenancy for Cause a tenant must, within ten days, dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do this, the tenant is conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice under section 47(5).

#### **Landlord's notice: cause**

**47 (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.

I find that the Tenant was deemed to have received the Notice to end the tenancy on October 20, 2018. Pursuant to section 49(8) the *Act*, the Tenant had 10 days to dispute the Notice. I find that the Tenant did not dispute the Notice to End Tenancy and that the

time for doing so has expired. The Landlord is therefore entitled to an Order of Possession pursuant to section 55(2) of the *Act*.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the *Act*, effective not later than 2 days after service of this Order upon the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in his application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for his application. I grant permission to the Landlord to keep \$100.00 from the security deposit for this tenancy in full satisfaction of this award.

### Conclusion

I grant an **Order of Possession** to the Landlord, effective not later than **2 days** after service of this Order upon the Tenant. The Tenant must be served with this Order. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I grant permission to the Landlord to keep **\$100.00** from the security deposit for this tenancy, in full satisfaction of the award contained in my decision.

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: December 7, 2018

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Residential Tenancy Branch