



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Coast Foundation Society  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes          OPC

### Introduction

This hearing was convened in response to an application for dispute resolution claiming an order of possession by the Landlord pursuant to section 55 of the *Residential Tenancy Act* (the “Act”).

The Tenant did not appear at the hearing until several minutes after the start of the hearing. In the interim the Landlord stated that on March 15, 2019 the Tenant was served in person with the application for dispute resolution, notice of hearing and all evidence (the “Materials”). Upon the Tenant’s appearance at the hearing the Landlord’s evidence given to that point on the Landlord’s claim for an order of possession was reviewed with the Tenant. The Landlord and Tenant were thereafter each given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

### Background and Evidence

The following are agreed or undisputed facts: the tenancy originally started with a different landlord in 2012. The current Landlord subsequently entered into a tenancy agreement with the Tenant for a tenancy start date of July 1, 2017. Rent of \$375.00 is payable on the first day of each month. On January 28, 2019 the Tenant found a one month notice to end tenancy for cause (the “Notice”) posted on its door. The effective date set out on the Notice is February 28, 2019. The reason stated on the Notice is that the Tenant has repeatedly paid rent late. The Notice contains details for the reason.

The Landlord states that in the past 6 months the Tenant has been late in paying rent each month. The Landlord states that the Tenant has not paid rent for February, March or April 2019. The Tenant agrees that he has repeatedly paid the rent late and that no rent has been paid for April 2019. The Tenant states that he did not dispute the Notice within the time allowed as he encountered difficulties with the Residential Tenancy Branch (the "RTB") electronic application process and then left it. The Tenant states that he became ill and was admitted to hospital on February 9, 2019, remaining there for the month. The Tenant states that he did have a support worker while at the hospital but that after leaving the hospital the Tenant lost the contact information for this person. The Tenant states that he was told by one of the Landlord's staff persons that the Landlord would drop the dispute proceedings if the Tenant would pay his rental arrears. The Tenant states that he is unable to do so at present and is waiting for income to arrive to be able to pay the arrears. The Tenant states that its current Advocate was contacted for assistance about 2 weeks prior to this hearing. The Advocate submits that the Tenant is confused and that the Advocate was contacted earlier than stated by the Tenant. The Advocate submits that the Tenant was misled by the Advocate as the Advocate informed the Tenant that the Notice could be disputed at the hearing.

The Landlord seeks an order of possession for as early as possible.

### Analysis

Section 47(5) of the Act provides that if a tenant who has received a notice to end tenancy for cause does not make an application for dispute resolution within 10 days after the date the tenant receives the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date. Section 55(2)(b) of the Act provides that a landlord may request an order of possession of a rental unit by making an application for dispute resolution where a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired. Based on the Tenant's evidence that it found the Notice on the door of the unit on January 28, 2019 I find that the Tenant received the Notice from the Landlord on that date.

Although the Tenant gives evidence that it attempted to dispute the Notice by making an application and while it may well be that the Tenant encountered difficulties with the application

process, ill health, or supportive assistance in disputing the Notice, based on the Tenant's evidence that rent payments have been repeatedly late I consider that the Tenant did not have any valid basis to dispute the Notice in any event. Further, even if there was an agreement that the Landlord would not pursue the end of the tenancy if the Tenant paid the arrears, given the Tenant's evidence that no arrears were paid and that April 2019 rent has not been paid, I consider that the Tenant did not meet the terms of the agreement.

As the Tenant received the Notice and did not dispute the Notice, and as the time allowed for the Tenant to dispute the Notice has expired, I find that the Tenant is conclusively presumed to have accepted the end of the tenancy and must move out of the unit. The Landlord is entitled to an order of possession.

#### Conclusion

**I grant** an Order of Possession to the Landlord. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the RTB under Section 9.1(1) of the Act.

Dated: April 30, 2019

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Residential Tenancy Branch