



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FFL, OPC

### Introduction

This was a cross application hearing that dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62;

This hearing also 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; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The parties confirmed that they had exchanged their documentary evidence. While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

### Issue(s) to be Decided

1. Is the tenant entitled to an order to compel the landlord to comply with the *Act*, regulation or tenancy agreement?

2. Is the landlord entitled to an Order of Possession for Cause, pursuant to sections 47 and 55 of the *Act*?
3. Is the landlord entitled to recover the filing fee for this application from the tenant, pursuant to section 72 of the *Act*?

### Background and Evidence

Both parties agreed that this tenancy began on December 5, 2018 and is currently ongoing. The monthly rent of \$750.00 is due on the first of the month. At the outset of the tenancy the tenant paid a security deposit of \$375.00

The landlord testified that on February 12, 2019 a One Month Notice with an effective date of March 31, 2019 was personally served on the tenant. The tenant confirmed receipt of the notice on that day. The landlord testified that since the tenant moved in he is constantly yelling and screaming. The landlord testified that other tenants have moved out because of the constant noise. The landlord testified that the notice was issued on the following grounds:

- *The tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant*
- *Breach of a material term of the tenancy that was not corrected within a reasonable time after written notice to do so*

The landlord testified that the tenant has been warned on numerous occasions both verbally and in writing, but to no avail. The landlord testified that other tenants are concerned of their wellbeing and feel threatened by the tenant. The landlord testified that the tenancy should end and requests an order of possession.

The tenant gave the following testimony. The tenant agrees that he was served the notice to end tenancy on February 12, 2019. The tenant testified that he yells and screams because the “secret service” keeps asking him questions that upset him. The tenant testified that he hears these questions all day whether he is on the bus or on skytrain or in his own unit. The tenant testified that the secret service is asking these questions through the cameras. The tenant testified that he moved to Canada in 1987

and that the secret service has been following him and asking him these questions throughout his time here.

### Analysis

When a landlord issues a notice under section 47 of the Act, the landlord bears the responsibility of providing sufficient evidence to support the issuance of the notice. The tenant did not dispute the landlords' testimony. The tenant felt that he was justified in yelling and screaming all the time because the "secret service" was asking him questions that upset him. I find that the landlord has provided sufficient evidence to show that this tenancy must end. In addition, based on the testimony of both parties and the evidence provided, I find that service of the One Month Notice was effected on the tenant on February 12, 2019, in accordance with section 88 of the *Act*. Upon review of the One Month Notice, I find that it meets the form and content requirements of section 52 of the *Act*.

Section 47(4) and section 47(5) state that if a tenant who has received a One Month Notice 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.

In this case, the tenant did not dispute the One Month Notice within 10 days of receiving it. The tenant had 10 days from the receipt of the One Month Notice to file with the RTB to dispute the One Month Notice. 10 days from February 12, 2019, when the tenant received the One Month Notice, was February 22, 2019. The tenant filed an application on May 2, 2019, over two and half months later. It is worth noting that the tenant did not specifically apply to dispute the notice, but rather to have the landlord comply with the Act, regulation or tenancy agreement.

I find that, pursuant to section 47 of the *Act*, the tenant's failure to file to dispute the One Month Notice within 10 days of receiving the One Month Notice led to the end of this tenancy on the effective date of the notice. In this case, this requires the tenant to vacate the premises by March 31, 2019.

Based on all of the above and for the reasons I've outlined, I find that the landlord is entitled to an Order of Possession. The landlord will be given a formal Order of

Possession which must be served on the tenant. The landlord may enforce this Order in the Supreme Court of British Columbia.

As the landlord was successful in his application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 and therefore order that the landlord is entitled to retain \$100.00 from the security deposit in satisfaction of that claim. The One Month Notice is confirmed, it is of full effect and force. The tenancy is terminated.

### Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord, which should be served on the tenant. 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.

The tenants' application is dismissed in its entirety without leave to reapply.

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: May 24, 2019

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Residential Tenancy Branch