



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding THE BLOOM GROUP  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes

OPC

### 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 sections 47 and 55 of the *Act*.

The landlord's agent J.B. attended on behalf of the corporate landlord at the date and time set for the hearing of this matter. The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:51 a.m. in order to enable the tenant to call into 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 Dispute Resolution Proceeding. I also confirmed from the teleconference system that the landlord's agent and I were the only ones who had called into this teleconference.

As only the landlord's agent attended the hearing, I asked the landlord's agent to confirm that the tenant had been served with the Notice of Dispute Resolution Proceeding for this hearing. The landlord's agent testified that the tenant was sent the landlord's notice of this hearing by Canada Post registered mail on March 21, 2019, and provided a Canada Post registered mail tracking number as proof of service, which I have noted on the cover sheet of this decision. The landlord's agent testified that he confirmed through the Canada Post registered mail tracking report that the package was signed for as delivered to and received by the tenant on March 25, 2019.

As such, I find that the tenant was served with the notice of this hearing in accordance with section 89 of the *Act*.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession on the basis of the notice to end tenancy for cause?

### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A written tenancy agreement was not submitted into evidence, however, the landlord's agent providing the following information pertaining to this tenancy:

- This tenancy began in July 2014 and is currently a month-to-month tenancy.
- Monthly rent of \$348.00 is paid directly to the landlord on behalf of the tenant through social assistance.

The tenant continues to reside in the rental unit at the time of this hearing.

The landlord submitted a copy of the One Month Notice to End Tenancy (One Month Notice) dated January 29, 2019 into evidence, which states an effective move-out date of February 28, 2019, with the following boxes checked off as the reasons for seeking an end to this tenancy:

*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.*

*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.*
- *jeopardize a lawful right or interest of another occupant or the landlord.*

The "Details of Cause" section of the notice provides the following additional details pertaining to the reasons for ending the tenancy, as follows:

*[The tenant] physically attacked a female tenant of the building on January 25, 2019@ 4:18pm causing her bodily harm requiring medical attention, he was subsequently arrested VPO File #[withheld], the attack was witnessed by several tenants whom are now afraid to be in the same building with [the tenant] as is the victim of the attack. [The tenant] was released with conditions of no contact on January 28, 2019, he has had previous complaints regarding behavioral issues but nothing of this magnitude requiring his removal from the building.*

The landlord's agent testified that he personally served the tenant with the One Month Notice on January 30, 2019 at approximately 4:00 p.m. The landlord's agent submitted into documentary evidence a Proof of Service signed by a witness to the service, in support of his sworn testimony.

The landlord's agent provided testimony that he viewed the security camera video showing the tenant's assault on the female occupant of the building. The landlord's agent described the incident as an "unprovoked, violent assault" and testified that the video showed the tenant holding the female occupant by the throat and banging her head against the wall. The landlord submitted into documentary evidence a hand-written statement from the occupant who was the victim of the assault confirming that she was attacked by the tenant on January 25, 2019 and that police and ambulance responded.

The landlord's agent testified that the occupant is afraid to return to the apartment building to reside as long as the tenant resides in the building.

The landlord's agent testified that he has not received any notice from the tenant that he is disputing the One Month Notice.

The landlord's agent testified that the tenant's rent has been paid for the month of May 2019.

### Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

In this case, I accept the testimony of the landlord's agent that he personally served the One Month Notice to the tenant on January 30, 2019, as supported by the proof of service signed by a witness to the service.

Section 15 of Residential Tenancy Policy Guideline #12. Service Provisions explains the requirement for proof of service, as follows, in part:

*Where proof of service is required, the person who actually served the documents must either:*

- be available as a witness in the hearing to prove service, or*
- provide a signed statement with the details of how the documents were served.*

*Proof of service personally should include the date and time of service, the location where service occurred, description of what was served, the name of the person who was served, and the name of the person who served the documents.*

As landlord's agent J.B. was the person who "actually served the documents" and he was able to testify to the date and time of service, the method of service, location of service, and the specifics of the documents served, I find that the landlord's agent was able to prove service of the One Month Notice on the tenant.

As such, I find that the tenant was deemed in receipt of the One Month Notice on January 30, 2019.

Section 47(5) of the *Act* states that a tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice to end tenancy if the tenant fails to make an application for dispute resolution in accordance with section 47(4) of the *Act*.

I find no evidence before me that the tenant filed an application for dispute resolution within the ten days of receipt of the notice, as provided under section 47(4) of the *Act*.

Accordingly, I must consider if the landlord is entitled to an Order of Possession under section 55 of the *Act*, based on the fact the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice as provided by section 47(5) of the *Act*. In this case, the effective vacancy date of the notice was February 28, 2019.

For an Order of Possession to be granted to a landlord, sections 47(3) and 55 of the *Act* require that a landlord's notice to end tenancy for cause must comply with the form and content requirements of section 52 of the *Act*.

In considering this matter, I have reviewed the landlord's One Month Notice to determine if it is compliant with the requirements of section 52 of the *Act*. After reviewing the One Month Notice submitted into evidence, I find that the notice meets the requirements for form and content as set out in section 52 of the *Act* as it is signed and dated by the landlord, provides the address of the rental unit, states the effective date of the notice, sets out the grounds for the tenancy to end, and is in the approved form.

As I have made a finding that the tenant is conclusively presumed to have accepted the tenancy ended on the effective vacancy date of the One Month Notice, and that the One Month Notice complies with section 52 of the *Act*, the landlord must be granted an Order of Possession. As the effective vacancy date of the One Month Notice has now passed, this Order of Possession will be effective two days after service upon the tenant by the landlord.

As the landlord has received the tenant's rent payment directly from social assistance on behalf of the tenant for rent for the month of May 2019, I order that the landlord refund the pro-rated amount of rent paid on behalf of the tenant for the remainder of the month of May 2019 upon the tenant returning vacant possession of the rental unit to the landlord.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord **effective two days after service of this Order on the tenant**. 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 or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlord is ordered to refund the pro-rated amount of rent paid on behalf of the tenant for the remainder of the month of May 2019 upon the tenant returning vacant possession of the rental unit to the landlord.

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 10, 2019

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Residential Tenancy Branch