



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPC FF

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held on July 4, 2019. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession based on a One Month Notice to End Tenancy for Cause (the Notice).

Both parties attended the hearing. The Landlord had an agent attend the hearing on his behalf (referred to as the "Landlord"). The Landlord stated that one of Tenants was personally served with the Notice of Hearing and evidence on June 7, 2019. The Tenant at the hearing stated that she is not sure when the Landlord served the package and was unable to confirm the date that this occurred. I find the Landlord has provided a more compelling account of how and when the documents were served, and I have placed more weight on it. I find the Tenants were served with the Notice of Hearing and evidence the same day it was personally served, on June 7, 2019. The Tenant did not submit any documentary evidence.

The Tenant had difficulty following directions during the hearing and continually yelled, and spoke out of turn, despite numerous warnings to wait until it was her turn. I utilized the mute function on the phone line on several occasions as to allow the Landlord to present her statements without aggressive interruptions from the Tenant. Then, the Tenant was given a chance to respond after the Landlord spoke.

Both parties were given a full opportunity to be heard, to present evidence and to make submissions. 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.

### Issue to be Decided

- Is the landlord entitled to an order of possession under the *Act*?

### Background and Evidence

The Landlord stated that they personally served the 1 Month Notice to End Tenancy (the Notice) to one of the Tenants on May 1, 2019. The Tenant stated she does not know the exact date that it was served. The Landlord holds a security deposit of \$1,000.00.

The Notice indicates several reasons for ending the tenancy. The Landlord stated that there have been repeated smoking issues, and the Tenant is highly volatile.

The Tenant feels the Landlord is exaggerating issues in order to end the tenancy. The Tenant stated she is allowed to smoke, as the tenancy agreement does not indicate she can't.

The Landlord is seeking to end the tenancy because the situation has become volatile.

### Analysis

Based on the testimony and documentary evidence, and on a balance of probabilities, I find:

After reviewing the Notice, I am satisfied that it complies with section 52 of the *Act* [*form and content of notice to end tenancy*]. Section 47 of the *Act* permits a landlord to end a tenancy for cause. A tenant who receives a notice to end tenancy for cause has 10 days after receipt to dispute it by making an application for dispute resolution. Failure to dispute the notice to end tenancy for cause in this period results in the conclusive presumption that the tenant has accepted the end of the tenancy, under section 47(5) of the *Act*.

In this case, the Landlord issued the Notice for several reasons. It does not appear the Tenants ever filed an application to dispute the Notice with the Residential Tenancy Branch.

The Landlord stated one of the Tenants was personally served with the Notice on May 1, 2019. The Tenant acknowledged getting the Notice, but was not sure of the exact date. When weighing these two versions of events, I find the Landlord has provided a more detailed and compelling account of when this document was served. As such, I have placed more weight on the Landlords account. I find the Tenants were served with the Notice on May 1, 2019, the same day it was personally delivered.

The Tenants had 10 days after their receipt of this Notice, until May 11, 2019, to dispute it with our office, but did not do so. Accordingly, pursuant to section 47(5) of the *Act*, I find the tenants are conclusively presumed to have accepted the end of the tenancy on the effective date of the Notice.

This part of the *Act* is non-discretionary, and although I understand this outcome may create some hardship, I am bound by the parameters laid out in this section. Section 47 states as follows:

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.

The Tenants are conclusively presumed to have accepted the end of the tenancy by not filing an application to dispute the Notice. Based on this, and the Landlord's testimony supporting why it was issued, I find the Landlord is entitled to an order of possession, which will be effective **two days after service** on the Tenants.

As the Landlord's application was successful, and pursuant to section 72 of the *Act* I grant the Landlord the recovery of the cost of the filing fee in the amount of **\$100.00**. I **authorize** the Landlord to retain \$100.00 from the Tenants' \$1,000.00 security deposit in full satisfaction of the recovery of the cost of the filing fee, which I find leaves a security deposit balance of \$900.00.

### Conclusion

The landlord is granted an order of possession effective **two days after service** on the tenants. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that 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: July 05, 2019

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Residential Tenancy Branch