



# Dispute Resolution Services

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## Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding MURRAY HILL DEVELOPMENTS LTD.  
and [tenant name suppressed to protect privacy]

### **DECISION**

Dispute Codes OPC, FFL

#### Introduction

On June 13, 2019, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession based on a One Month Notice to End Tenancy for Cause (the "Notice") pursuant to Section 47 of the *Residential Tenancy Act* (the "*Act*") and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

S.J. attended the hearing as an agent for the Landlord; however, the Tenant did not attend the hearing. All in attendance provided a solemn affirmation.

S.J. advised that the Notice of Hearing package and evidence were served to the Tenant by registered mail on June 21, 2019 (the registered mail tracking number is on the first page of this decision). Based on this testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was deemed to have received the Landlord's Notice of Hearing package and evidence five days after it was mailed.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

S.J. advised that the tenancy started on April 1, 2019 and that rent was established at an amount of \$1,195.00 per month, due on the first day of each month. A security deposit of \$597.50 was paid.

He stated that the Notice was served to the Tenant by placing it in her mailbox on May 27, 2019 and a signed proof of service form was submitted into evidence to corroborate this. The reason the Landlord served the Notice is because the "Tenant or a person permitted on the property by the tenant has: significantly interfered with or unreasonably disturbed another occupant or the landlord." As well, the Landlord also served the Notice because 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." The effective date of the Notice was June 30, 2019.

The Tenant did not make an Application to cancel the Notice.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

With respect to the Notice served to the Tenant on May 27, 2019, I have reviewed this Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I find that this Notice meets all of the requirements of Section 52.

The Landlord's evidence is that the Notice was served on May 27, 2019 by being placed in the Tenant's mailbox, and a signed proof of service form corroborated this. As per Section 90 of the *Act*, the Notice would have been deemed received after three days of being placed in the mailbox. According to Section 47(4) of the *Act*, the Tenant has 10 days to dispute this Notice, and Section 47(5) of the *Act* states that "*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 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.*"

After being deemed to receive the Notice, the tenth day fell on Sunday June 9, 2019 and the undisputed evidence is that the Tenant did not make an Application to dispute this Notice by Monday June 10, 2019. I find it important to note that the information with respect to the Tenant's right to dispute the Notice is provided on the second page of the Notice.

Ultimately, as the Tenant did not dispute the Notice and as there was no evidence provided corroborating that the Tenant had any extenuating circumstances that prevented her from disputing the Notice, I am satisfied that the Tenant is conclusively presumed to have accepted the Notice. As such, I find that the Landlord is entitled to an Order of Possession. I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant.

As the Landlord was successful in his claims, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application. Pursuant to Sections 67 and 72 of the *Act*, I allow the Landlord to retain a portion of the security deposit in satisfaction of this debt outstanding.

Conclusion

I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. This Order must be served on the Tenant by the Landlord. 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.

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: August 8, 2019

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Residential Tenancy Branch