



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding FISGARD STREET HOLDINGS  
LTD. and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      OPC  
                              AS, CNC, MT

### Introduction

This teleconference hearing was scheduled in response to applications by both parties under the *Residential Tenancy Act* (the “Act”). The Landlord applied for an Order of Possession based on a One Month Notice to End Tenancy for Cause (the “One Month Notice”). The Tenant applied for an order to allow assignment or sublet of the rental unit, to cancel a One Month Notice, and for an extension of time in which to dispute the One Month Notice.

An agent for the Landlord (the “Landlord”) was present for the teleconference hearing, as was a family member of the Tenant who had been provided authorization through a letter from the Tenant to speak on behalf of the Tenant (the “Representative”).

The Representative confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Landlord’s evidence. The Landlord stated that they did not receive a copy of the Notice of Dispute Resolution Proceeding package regarding the Tenant’s application and did not receive any evidence from the Tenant. The Representative was unsure as to whether the documents were served or how they were served and was therefore not able to provide any further clarification.

As the Representative confirmed receipt, I find that the Landlord’s documents were duly served in accordance with Sections 88 and 89 of the *Act*. However, I have no information before me to establish that the Tenant’s documents were served to the Landlord regarding the Tenant’s application as required by the *Residential Tenancy Branch Rules of Procedure*. As such, I am not satisfied as to service of these documents. Therefore, the Tenant’s application is dismissed, without leave to reapply.

The Tenant's application and evidence will not be considered as part of this decision. This decision will address the Landlord's application only. The parties were informed of this at the hearing.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present accepted evidence, make submissions and question the other party.

I have considered 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 based on the One Month Notice?

### Background and Evidence

The Landlord stated that the tenancy was already in place when the current owner purchased the property in 2017. They signed a new tenancy agreement with the Tenant in March 2018 and submitted a copy of this agreement into evidence. Rent at the time of this tenancy agreement was \$1,274.00, due on the first day of each month. The Landlord stated that as of July 1, 2019 rent was raised to \$1,305.85. The Landlord stated that a security deposit of \$427.50 was paid in approximately 2002. The Landlord confirmed that rent was paid for August 2019.

The Representative stated that the tenancy began approximately 24 years ago. He was unsure as to the current rent amount or the security deposit amount that was paid.

The Landlord testified that the Tenant was served with a One Month Notice on May 22, 2019 by posting the notice on the Tenant's door. A copy of the One Month Notice was submitted into evidence and stated the following as the reasons for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has:
  - Significantly interfered with or unreasonably disturbed another occupant of 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:
  - Damage the landlord's property
  - 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
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit or property
- Tenant has assigned or sublet the rental unit/site without landlord's written consent

Further details were provided on the notice as follows:

*Tenant has had numerous (on going, different every few months) troublesome, unauthorized persons living in the premises, and these persons are observed creating noise, causing a disturbance with loud arguing, physically traveling up and down stairs on a constant basis, and affecting the enjoyment of other tenants. Ongoing complaints on an ongoing basis regarding these issues. Tenant has been told numerous times that no other persons to be residing there except tenant, however, this has not been the case.*

The Representative was unsure as to when the Tenant had received the One Month Notice.

The Landlord provided testimony and evidence regarding the incidents that led to service of the One Month Notice. This included concerns with unauthorized people residing in the rental unit, complaints from other building residents regarding the occupants, extreme mess in the rental unit, and concerns about the behaviour of the people residing in the rental unit and/or their guests.

The Landlord testified as to a recent incident when an occupant or guest at the rental unit broke into a store below the rental unit. The Landlord stated that police were called and found the suspect in the rental unit. The Landlord submitted evidence relating to these concerns such as email communication with the Tenant, a newspaper article regarding the break and enter, and text message communication with the police.

The Landlord further stated that she was unsure whether the Tenant had sublet/assigned the rental unit and was not living at the rental unit or whether the additional occupants are roommates of the Tenant.

The Representative testified that the Tenant has had roommates in the rental unit since the start of the tenancy. He stated that the Tenant has not always been able to find good roommates but dealt with issues as soon as he became aware. He stated that the incident regarding the break and enter was the friend of the Tenant's roommate at the time and that this person did not reside in the rental unit.

The Representative further stated that that roommate is no longer residing in the rental unit and that the break and enter incident was an isolated event that has since been dealt with through the removal of this roommate. He stated that the Tenant was away at the time of the break and enter incident. However, he noted that the Tenant took appropriate actions to correct the situation once he became aware. He also stated that the Tenant still resides in the rental unit.

### Analysis

Section 47(4) of the *Act* states that a tenant has 10 days to file an application to dispute a One Month Notice. If a tenant does not apply within 10 days, then Section 47(5) of the *Act* applies as follows:

(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.

I accept the testimony of the Landlord that they posted the One Month Notice on the Tenant's door on May 22, 2019. As the Representative was unsure as to the exact date the notice was received by the Tenant, I refer to the deeming provisions of Section 90 of the *Act* which state that a notice served on the door is deemed received 3 days later. Therefore, I find that the Tenant had 10 days from May 25, 2019 to apply to dispute the One Month Notice.

The Tenant filed an application on June 20, 2019, which was well beyond the allowable time period provided by the *Act*. Although the Tenant applied for an extension of time to dispute the notice, the Tenant's application was dismissed and the request for an extension of time is not being considered. Therefore, I find that the Tenant had 10 days to apply to dispute the One Month Notice. As he did not apply within this time period, I find that the Tenant is conclusively presumed to have accepted that the tenancy ends in accordance with Section 47(5) of the *Act*.

Upon review of the One Month Notice dated May 22, 2019, I find that the form and content comply with the requirements of Section 52 of the *Act*. Therefore, pursuant to Section 55(2) of the *Act*, I find that the Landlord is entitled to an Order of Possession. I accept the testimony of the Landlord that August 2019 rent has been paid and therefore I grant the Landlord an Order of Possession effective August 31, 2019 at 1:00 pm.

### Conclusion

The Tenant's Application for Dispute Resolution is dismissed, without leave to reapply.

Pursuant to Section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **August 31, 2019 at 1:00 pm**. This Order must 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.

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 16, 2019

---

Residential Tenancy Branch