



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, FFL

### Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution filed on June 21, 2019 in which the Landlord requested an Order of Possession, based on a 1 Month Notice to End Tenancy for Cause issued on May 31, 2019 (the "Notice") and recovery of the filing fee.

Only the Landlord called into the hearing. She gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 11:20 a.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlord's hearing package. The Landlord testified that she personally served the Tenant with the Notice of Hearing and the Application on June 28, 2019; this service was witnessed by two individuals who provided a proof of service in evidence. I accept the Landlord's testimony and evidence in this regard and find that the Tenant was duly served as of June 28, 2019 and I therefore proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matters

The Landlord confirmed their email addresses during the hearing as well as her understanding that this Decision would be emailed to them.

### Issues to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Should the Landlord recover the filing fee?

### Background and Evidence

The Landlord testified that the tenancy began July 2015.

The Landlord served the Notice on the Tenant on May 31, 2019. The effective date of the Notice was June 30, 2019. The reasons cited on the Notice are as follows:

- the Tenant is repeatedly late paying rent;
- the Tenant or a person permitted on the residential property by the Tenant has
  - significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, and,
  - put the landlord's property at significant risk;
- the Tenant has engaged in illegal activity that has caused or is likely to
  - damage to the landlord's property, and
  - has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
- the Tenant has caused extraordinary damage to a rental unit or residential property;

In terms of repeated late payment of rent, the Landlord testified that the Tenant has been late paying her \$31.00 portion of rent every month since February of 2019 (7 times) as the Tenant has not paid this portion.

The Landlord also testified that the Tenant has caused extraordinary damage to the rental unit, including but not limited to: removing the electrical plugs, removing the ceiling fan, as well as damaging the walls and all of the doors in the rental unit. The Landlord stated that the wall and door damage seems to be from either kicking or

punching. The Landlord submitted numerous photos in evidence confirming the extensive damage to the rental unit.

The Landlord also testified that the Tenant also allows people to enter the rental unit through windows such that they cause damage to the walls. She further stated that the frequency and number of guests suggest the Tenant may be dealing drugs from the rental unit. The Landlord also testified that she has personally witnessed the Tenant obtaining drugs at the rental property.

The Landlord also stated that the neighbours have called the police on numerous occasions due to the Tenant yelling and screaming during the day and at night. Further, since issuing the Notice, the Tenant has been arrested three times at the rental property.

### Analysis

Ending a tenancy is a significant request and must only be done in accordance with the *Residential Tenancy Act*. A Landlord who has cause to end a tenancy may do so in accordance with section 47; that section provides as follows:

**47** (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- (a) the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;
- (b) the tenant is repeatedly late paying rent;
- (c) there are an unreasonable number of occupants in a rental unit;
- (d) the tenant or a person permitted on the residential property by the tenant has
  - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
  - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
  - (iii) put the landlord's property at significant risk;
- (e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
  - (i) has caused or is likely to cause damage to the landlord's property,

(ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

(iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

(f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;

(g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) *[obligations to repair and maintain]*, within a reasonable time;

(h) the tenant

(i) has failed to comply with a material term, and

(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

(i) the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 *[assignment and subletting]*;

(j) the tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property;

(k) the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;

(l) the tenant has not complied with an order of the director within 30 days of the later of the following dates:

(i) the date the tenant receives the order;

(ii) the date specified in the order for the tenant to comply with the order.

(2) A notice under this section must end the tenancy effective on a date that is

(a) not earlier than one month after the date the notice is received, and

(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(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.

As noted above, section 47(4) provides that once served a 1 Month Notice the Tenant has only 10 days in which to apply to dispute the Notice. If they do not, they are conclusively presumed, pursuant to section 47(5) to accept the end of the tenancy and must move out.

After consideration of the testimony before me and on a balance of probabilities I find as follows. I accept the Landlord's undisputed testimony that she personally served the Notice on the Tenant on May 31, 2019. I also accept her testimony that the Tenant failed to move from the rental unit on the effective date of the Notice and failed to apply to dispute the Notice.

I also find that the Landlord has sufficient cause to end this tenancy. I accept the Landlord's undisputed evidence that the Tenant has not paid her portion of the rent since February 2019 and as such as been repeatedly late paying her rent. I also find that the Tenant has caused extraordinary damage to the rental unit and has unreasonable disturbed others. The photos submitted by the Landlord confirm that the Tenant and her guests have extensively damaged the property. I therefore find that this tenancy should end for the reasons cited on the Notice.

I have reviewed the Notice and find that it complies with section 52 of the *Act*. As such, and pursuant to sections 47 and 55 I grant the Landlord an Order of Possession effective two days after service.

### Conclusion

The Landlord's Application for an Order of Possession based on the Notice is granted. The Order will be effective two days after service on the Tenant and may be filed and enforce in the B.C. Supreme Court as an Order of that court.

Having been successful the Landlord is entitled to recover the filing fee pursuant to section 72; I authorize her to retain \$100.00 of the Tenant's security deposit as payment of that fee.

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 13, 2019

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Residential Tenancy Branch