



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding FIRST SERVICE RESIDENTIAL BC LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes:

OPC, FFL

### Introduction

The hearing was convened in response to an Application for Dispute Resolution filed by the Landlord, in which the Landlord applied for an Order of Possession for Cause and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that sometime in October of 2019 the Dispute Resolution Package and evidence the Landlord submitted to the Residential Tenancy Branch in October of 2019 were sent to the Tenant, via registered mail. The Landlord submitted documentation from Canada Post that indicates registered mail was sent to the Tenant on October 15, 2019.

The Tenant stated that she received the aforementioned documents sometime during the first week of November of 2019, after she returned from a trip. The Tenant submitted a copy of a plane ticket, which indicates that she returned to Vancouver on November 01, 2019. As the Tenancy acknowledged receiving the aforementioned documents, the evidence was accepted as evidence for these proceedings.

On November 10, 2019 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was personally served to an agent for the Landlord on November 13, 2019. The Agent for the Landlord acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each party present at the hearing affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

Issue(s) to be Decided

Is the Landlord is entitled to an Order of Possession?

Background and Evidence

The Agent for the Landlord and the Tenant agree that this tenancy began on May 01, 2015 and that rent is due by the first day of each month.

The Agent for the Landlord stated that on September 10, 2019 a One Month Notice to End Tenancy for Cause, dated September 10, 2019, was sent to the Tenant, via registered mail. The Landlord submitted Canada Post documentation that corroborates this testimony.

The Tenant stated that she did not receive the Notice to End Tenancy that was mailed on September 10, 2019. She stated that she does not check her mail regularly; that she left the city sometime in the middle of October of 2019; and it is likely that she did not check her mail between September 10, 2019 and the time she left the city.

The Tenant stated that she did receive the One Month Notice to End Tenancy when she received the Landlord's evidence package sometime in the first week of November of 2019. She stated that she did not file an Application for Dispute resolution seeking to dispute the Notice because she assumed, she could respond to the Notice at these proceedings.

The Agent for the Landlord and the Tenant agree that the reasons for ending the tenancy cited on the Notice to End Tenancy are:

- the Tenant has allowed an unreasonable number of occupants in the unit;
- the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- the Tenant or a person permitted on the property by the Tenant has put the Landlord's property at significant risk;
- the Tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or well-being of another occupant;
- the Tenant has engaged in illegal activity that has, or is likely to, jeopardize a lawful right or interest of another occupant or the landlord;
- the Tenant has breached a material term of the tenancy agreement and has not corrected it within a reasonable time after receiving written notice to do so; and
- Tenant has assigned or sublet the unit without written consent.

The Agent for the Landlord and the Caretaker gave evidence in support of the Notice to End Tenancy. They submit that the Tenant has rented the unit out on a short-term rental basis, which has disturbed other tenants and compromised the safety of the building.

The Tenant disputed the reasons for ending the tenancy. She denied that she is renting the unit out to third parties.

Specific details of the testimony are not record here, as this tenancy is ending for reasons not directly related to those issues.

### Analysis

Section 47 of the *Act* authorizes a landlord to end a tenancy for a variety of reasons, by serving the tenant with a One Month Notice to End Tenancy.

On the basis of the undisputed evidence, I find that a One Month Notice to End Tenancy for Cause, dated September 10, 2019, was sent to the Tenant, via registered mail.

Section 90(a) of the *Residential Tenancy Act (Act)* stipulates that a document that is served by mail is deemed to be received on the 5<sup>th</sup> day after it is mailed. This is a rebuttable presumption, however.

On the basis of the testimony of the Tenant and the absence of evidence to the contrary, I find that the Tenant did not receive the Notice to End Tenancy that was mailed on September 10, 2019. I find that she did not receive this Notice due to her own neglect, as she did not check her mail for several weeks prior to leaving the city in October of 2019.

On the basis of the undisputed evidence, I find that the One Month Notice to End Tenancy for Cause, dated September 10, 2019, was again sent to the Tenant, via registered mail., on October 15, 2019.

On the basis of the testimony of the Tenant I find that she received the One Month Notice to End Tenancy sometime in the first week of November of 2019, when she received evidence from the Landlord sometime during the first week of November of 2019. As the Tenant does not know the precise date the Notice was received, I find it reasonable to conclude that the Notice to End Tenancy was received by November 07, 2019.

Section 47(5) of the *Act* stipulates that tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of a notice received pursuant to section 47 of the *Act* and that the tenants must vacate the rental unit by that date unless the tenant disputes the notice within ten days of receiving it.

As there is no evidence that the Tenant filed an Application for Dispute Resolution in which she disputed the One Month Notice to End Tenancy that she received by November 07, 2019, I find that the Tenant is conclusively presumed to have accepted that the tenancy ends on November 30, 2019, pursuant to section 47(5) of the *Act*.

As the Tenant is conclusively presumed to have accepted that the tenancy ends on November 30, 2019, I grant the Landlord's application for an Order of Possession for that date.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

### Conclusion

I hereby grant the Landlord an Order of Possession that is effective at 1:00 p.m. on November 30, 2019. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord has established a monetary claim, in the amount of \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. In the event the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and 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: November 18, 2019

---

Residential Tenancy Branch