



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP. and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for Cause pursuant to section 55 of the *Act*; and
- recovery of the filing fee from the tenant pursuant to section 72 of the *Act*.

The landlord's agent M.K. (the "landlord"), the tenant, and the tenant's agent, D.L. appeared at the hearing. Both parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord explained she served the 1 Month Notice to End Tenancy ("1 Month Notice") on three occasions to the tenant. The landlord said she posted it on the door of the rental unit on August 27, 2019, gave it to the tenant in person on September 13, 2019 and sent it by Canada Post Registered Mail on September 27, 2019. The tenant's agent acknowledged the tenant received the 1 Month Notice on September 13, 2019 in person but disputed receiving the notice on August 27, 2019 and said the tenant was unable to collect the Registered Mail due to inadequate identification.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Can the landlord recover the filing fee?

### Background and Evidence

A copy of the tenancy agreement reveals this tenancy began on September 1, 2013. Rent is \$874.43 per month and a security deposit of \$375.00 paid at the outset of the tenancy continues to be held by the landlord. The landlord explained she issued a 1 Month Notice to Cause citing:

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so; and
- *Residential Tenancy Act* only: security or pet deposit was not paid within 30 days as required by the tenancy agreement

The landlord explained she had several concerns about the tenant's conduct. She alleged the tenant had installed a washer into a unit which had plumbing that could not support it, that the tenant had allowed an illegal occupant to live in the unit and that the tenant had denied pest inspectors access to the rental unit on five occasions.

The tenant's agent disputed all portions of the landlord's notice. The tenant's agent said he was the person who was "illegally" occupying the suite. He argued that this was impossible because he had been in the suite for six years, had a parking spot and the landlord had been aware of his presence in the suite. The tenant provided submissions related to washing machine and the cockroaches noting the infestation had been dealt with and the washing machine had made up a portion of the rental unit for a significant amount of time.

When asked why the tenant had not disputed the notice, the tenant's agent said he was hoping to dispute the notice at the hearing, had technical issues when he attempted disputing the notice on the week of November 11 to 15, 2019 and the tenant herself did not have the "savvy" to dispute the notice.

### Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause, a tenant may within 10 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. I find that the tenant has failed to file an application for dispute resolution within the 10 days of receiving this Notice to End Tenancy. Accordingly, I find that the tenant is conclusively presumed under section 47(5)(a) of the *Act* to have accepted that the tenancy ended on the effective date of the

1 Month Notice, in this case, September 20, 2019. Section 47(5) states as follows, "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." I am therefore issuing an Order of Possession to the landlord effective 2 days after service on the tenant.

While I note that the tenant's agent provided submissions on their desire to dispute this notice, no formal steps were ever taken to do so. I therefore decline to consider their argument that they hoped to dispute the notice at the hearing.

As the landlord was successful in her application, she may recover the \$100.00 filing fee from the tenant.

### Conclusion

I am granting the landlord an Order of Possession to be effective two days after notice is served to the tenant. The landlord is provided with formal Orders in the above terms. Should the tenant fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

The landlord may retain \$100.00 from the tenant's security deposit in satisfaction for a return of the filing 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: November 22, 2019

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Residential Tenancy Branch