



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPC FFL

### Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for

- an Order of Possession for cause pursuant to section 55; and
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

While the landlord DS ("landlord") attended the hearing by way of conference call, the tenants did not. I waited until 9:42 a.m. to enable the tenants to participate in this scheduled hearing for 9:30 a.m. The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified that the tenants were served with the landlords' application for dispute resolution hearing package on October 10, 2019 by way of registered mail. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenants deemed served with the landlords' application and evidence on October 15, 2019, five days after its registered mailing. The tenants did not submit any evidence for this hearing.

The landlord testified at the beginning of the hearing that the tenants had moved out on November 17, 2019, the day before the hearing, but that they had left some of their belongings on the property. The landlord requested an Order of Possession still be considered as the tenants have not removed all their personal belongings.

The landlord provided undisputed testimony that the tenants were served with the landlord's 1 Month Notice to End Tenancy For Cause ('1 Month Notice') on September 23, 2019 by way of posting the 1 Month Notice on the tenants' door. In accordance with sections 88 and 90 of the *Act*, I find that the tenants deemed served with the 1 Month Notice on September 26, 2019, 3 days after posting.

### **Issues to be Decided**

Are the landlords entitled to an Order of Possession for cause?

Are the landlords entitled to recover their filing fee for this application?

### **Background and Evidence**

This fixed term tenancy began on April 1, 2018, and was to end on October 1, 2018. Monthly rent was set at \$2,000.00, payable on the first of each month. The landlords currently hold a security deposit of \$1,000.00.

The landlords issued the notice to end tenancy on September 23, 2019, with an effective date of October 31, 2019, providing the following grounds:

1. The tenants have allowed an unreasonable number of occupants in a rental unit;
2. The tenants are repeatedly late paying rent;
3. The tenants or a person permitted on the property by the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlords;
4. The tenants or a person permitted on the property by the tenants have put the landlord's property at significant risk.
5. 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.
6. Breach of a material term of the tenancy agreement that was not corrected within a reasonable amount of time after written notice to do so.

The landlord testified in the hearing that the tenants have been repeatedly late paying rent, which include at least 3 occasions in 2019. The landlord testified that on several occasions, the payments would not go through due to insufficient funds.

### **Analysis**

A copy of the 1 Month Notice was submitted by the landlords for this hearing, and I find that the landlords' 1 Month Notice complies with section 52 of the *Act*, which states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. I find that the tenants has failed to file an application for dispute resolution within the ten days of service granted under section 47(4) of the *Act*. Accordingly, I find that the tenants are conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 1 Month Notice, October 31, 2019.

In this case, this required the tenant and anyone on the premises to vacate the premises by October 31, 2019. As the tenants have not completely vacated the property by removing all their personal belongings, I find that the landlords are entitled to a two (2) day Order of Possession against the tenants, pursuant to section 55 of the *Act*.

As the landlords were successful with his application, I allow the landlords to recover the filing fee paid for this application.

The landlord continues to hold the tenants' security deposit of \$1,000.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenants' security deposit in partial satisfaction of the monetary claim.

### **Conclusion**

I find that the landlords are entitled to an Order of Possession. I find that the landlords' 1 Month Notice is valid and effective as of October 31, 2019.

I grant an Order of Possession to the landlords effective two **days after service of this Order** on the tenants. Should the tenants and any occupant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I allow the landlords to recover the filing fee for this application. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenants' security deposit in satisfaction of the monetary claim.

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

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Residential Tenancy Branch