



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Canadian Mental Health  
Association CMHC Kootenays  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, LRE, OPC, FF

### Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied on November 6, 2019 for:

1. An Order cancelling a notice to end tenancy - Section 47; and
2. An Order suspending or setting conditions on the Landlord’s right to enter the rental unit - Section 70.

The Landlord applied on November 20, 2019 for:

1. An Order of Possession - Section 55; and
2. An Order to recover the filing fee for this application - Section 72.

### Preliminary Matter

The Tenant did not appear on the conference call hearing. As the Tenant did not attend to pursue its own application, I dismiss the Tenant’s application. I accept the Landlord’s evidence that the Tenant was served with the Landlord’s application for dispute resolution and notice of hearing in person on December 2, 2019 and by registered mail on December 4, 2019 in accordance with Section 89 of the Act. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy effective?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

On October 23, 2019 the Landlord served the Tenant in person with a one month notice to end tenancy for cause (the "Notice"). The Notice is signed and dated by the Landlord, sets out the rental unit address, and sets out an effective date of November 30, 2019. The reasons set out on the Notice are that that the Tenant has an unreasonable number of occupants, that the Tenant or a person permitted on the property has significantly interfered with or unreasonably disturbed another occupant or the landlord, and that the Tenant has assigned or sublet the unit without the Landlord's consent. The Notice attached a letter setting out some details for the reasons for Notice. The Landlord states that the Tenant was given several warning letters before the Notice was served and provides copies of these letters. The Landlord states that it also met with the Tenant to discuss the matter. The Landlord states that the Tenant did not serve the Landlord with any application to dispute the notice to end tenancy.

Analysis

Section 47(5) of the Act provides that 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.

Although the Tenant made an application to dispute the Notice, as the Tenant did not serve the Landlord with its application to dispute the Notice, I find that the Tenant did not effectively dispute the Notice and that the Tenant is therefore conclusively presumed to have accepted the end of the tenancy. As a result, I find that the Landlord

is entitled to an order of possession. As the Landlord's claim has been successful, I find that the Landlord is entitled to recovery of the \$100.00 filing fee. The Landlord may deduct this from any security deposit held by the Landlord in full satisfaction of the claim. I make all orders for the Landlord in the name provided by the Landlord in its application.

### Conclusion

The Tenant's application is dismissed.

**I grant** an Order of Possession to the Landlord. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I grant the Landlord an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the 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 RTB under Section 9.1(1) of the Act.

Dated: January 08, 2020

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Residential Tenancy Branch