



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes

OPC OPR MNR MNDC FF

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held on January 13, 2020. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession based on a 10 Day Notice to End Tenancy for unpaid rent or utilities; and,
- a monetary order for unpaid rent or utilities.

The Landlord attended the hearing. Two of the Tenants attended the hearing.

The Landlord testified that she sent her application, notice of hearing, and evidence to each of the Tenants by registered mail on November 20, 2019. The tracking numbers were provided as proof of service for each of these packages sent individually to the Tenants. The Tenants were unclear in their responses as to whether or not the package was received. Pursuant to section 89 and 90 of the Act, I find the Tenants are deemed served with the Notice of Hearing and evidence 5 days after the packages were mailed, on November 25, 2019.

Subsequent to this, the Landlord filed an amendment to her initial application where she filed to include a monetary claim for damage or loss under the Act (rent, strata fines etc), as well as an order of possession based on a 1-Month Notice to End Tenancy for Cause. The Landlord stated she sent each of the Tenants this amendment, and accompanying evidence, by registered mail on December 9, 2019. The Landlord also provided the tracking numbers for each of these registered mail packages as her proof of service. One of the Tenants stated he got the package but was unclear as to when he got it, as he could not recall. The other Tenant denied getting anything. Pursuant to section 88, 89, and 90 of the Act, I find the Tenants are deemed served with these amendments 5 days after they were mailed, on December 14, 2019.

The Tenants confirmed that they did not upload or serve any evidence for this hearing.

All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Preliminary and Procedural Matters #1

The Landlord confirmed in the hearing that she already had a hearing in December 2019, where the 10 Day Notices from August and September 2019 were cancelled. I explained to the parties that I may not re-hear the issues behind these Notices, as a final and binding decision was already issued regarding them. I dismiss the Landlord's request for an order of possession based on the 10 Day Notices uploaded into evidence.

#### Preliminary and Procedural Matters #2

The Landlord applied for multiple remedies under the *Act*, some of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues in this application deals with whether or not the tenancy is ending. As a result, I exercised my discretion to dismiss, the Landlord's application for monetary compensation, with leave to reapply. The only ground I will consider in this hearing is the following ground:

- an order of possession based on a One Month Notice to End Tenancy for Cause (the Notice)

#### Issue to be Decided

- Is the Landlord entitled to an order of possession under the *Act*?

#### Background and Evidence

The Landlord testified that she issued a One Month Notice to End Tenancy for Cause (the Notice) to each of the Tenants. The Landlord uploaded copies of all 3 Notices, which were issued to the same rental unit, for the same grounds, on the same date. The Landlord also

uploaded a copy of the tenancy agreement into evidence which shows that all 3 Tenants rent the unit under on tenancy agreement.

The Landlord stated that she personally served all 3 Notices to one of the Tenants on November 8, 2019, when she attended the rental unit. The Landlord provided a witnessed proof of service document for each of these Notices, showing that she and a witness attended the unit to deliver the Notices to one of the Tenants, V.H. V.H. denied being served in this manner. The Tenants do acknowledge getting the Notice but were unclear about when they received it and how.

The Notice indicates the reasons for ending the tenancy are:

*Tenant is repeatedly late paying rent.*

*Tenant or a person permitted on the property by the Tenant has:*

- *significantly interfered with or unreasonably disturbed another occupant or the Landlord.*
- *seriously jeopardized the health or safety or lawful right of another occupant or the Landlord.*
- *put the Landlord's property at significant risk.*

*Tenant or a person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to:*

- *damage the Landlord's property.*
- *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.*
- *jeopardize a lawful right or interest of another occupant or the Landlord.*

*Tenant or a person permitted on the property by the Tenant has caused extraordinary damage to the unit/site or property/park.*

### Analysis

Based on the testimony and documentary evidence, and on a balance of probabilities, I find:

Section 47 of the *Act* permits a Landlord to end a tenancy for cause. A tenant who receives a notice to end tenancy for cause has 10 days after receipt to dispute it by making an application for dispute resolution. Failure to dispute the notice to end tenancy for cause in this period results in the conclusive presumption that the tenant has accepted the end of the tenancy.

In this case, the Landlord issued the Notice on the bases indicated above. The Tenants were unclear about when and how they received the Notice, issued on November 8, 2019. However, in contrast to this, the Landlord stated she personally gave one of the Tenants, V.H., all 3

Notices (for each of the Tenants) on November 8, 2019. Although V.H. denied that this happened, the Landlord provided a signed proof of service document for these Notices to substantiate the service was done in this manner. I find it more likely than not that the Landlord served the 3 Notices in person, on November 8, 2019. I find all 3 Notices were served this same day, to each of the Tenants.

The Tenants had 10 days, until November 18, 2019, to dispute the Notices, but did not do so. Accordingly, pursuant to section 47(5) of the *Act*, I find the Tenants are conclusively presumed to have accepted the end of the tenancy.

The Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenants.

As the Landlord's application was successful, and pursuant to section 72 of the *Act* I grant the Landlord the recovery of the cost of the filing fee in the amount of \$100.00. I authorize the Landlord to retain \$100.00 from the Tenants' security deposit in full satisfaction of the recovery of the cost of the filing fee.

### Conclusion

The Landlord is granted an order of possession effective **two days after service** on the Tenants. This order must be served on the Tenants. If the Tenants fail to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and be 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: January 13, 2020

---

Residential Tenancy Branch