



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC

### Introduction

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

- an Order of Possession for cause, pursuant to sections 47 and 55; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:41 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and 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. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified that he served the tenant with his application for dispute resolution via registered mail on November 14, 2019. The landlord entered into evidence a Canada Post receipt and tracking number evidencing same. I find that the tenant was deemed served with the landlord's application for dispute resolution on November 19, 2019, five days after its registered mailing, pursuant to sections 89 and 90 of the *Act*.

### Issues to be Decided

1. Is the landlord entitled to an Order of Possession for cause, pursuant to sections 47 and 55 of the *Act*?

2. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord provided the following undisputed testimony. This tenancy began on June 1, 2015 and is currently ongoing. Monthly rent in the amount of \$899.15 is payable on the first day of each month. A security deposit of \$400.00 was paid by the tenant to the landlord.

The landlord testified that on September 26, 2019 he personally served the tenant with a One Month Notice to End Tenancy for Cause with an effective date of October 31, 2019 (the "One Month Notice").

The One Month Notice states the following reasons for ending the tenancy:

- 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.

The landlord testified that the tenant paid rent for the month of January 2020 and that he is seeking an Order of Possession effective January 31, 2020.

The landlord testified that he has received numerous complaints from other tenants in the subject rental building about the tenant's conduct. The landlord testified that the tenant leaves unwanted notes on other tenants' doors inviting them to drink alcohol and smoke weed together.

The landlord testified that on one occasion the tenant fell asleep in his chair while he was smoking, and the cigarette fell onto his chair and made the chair start smoking. The landlord testified that his neighbours are afraid the tenant is doing to start a fire and put them and their families in jeopardy.

The landlord testified that the tenant has not kept the subject rental property in a sanitary condition and that the subject rental property smells of urine.

The tenant has not filed an application with the Residential Tenancy Branch to dispute the One Month Notice.

### Analysis

Based on the undisputed testimony of the landlord, I find that service of the One Month Notice was effected on the tenant on September 26, 2019, in accordance with section 88 of the *Act*.

Section 47(4) and section 47(5) of the *Act* state that if a tenant who has received a One Month Notice does not make an application for dispute resolution within 10 days after the date the tenant receives the notice, 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.

In this case, the tenant did not dispute the One Month Notice within 10 days of receiving it. I find that, pursuant to section 47 of the *Act*, the tenant's failure to file to dispute the One Month Notice within 10 days of receiving the One Month Notice led to the end of this tenancy on the effective date of the notice. This required the tenant to vacate the subject rental property by October 31, 2019, which he failed to do. I therefore find that the landlord is entitled to an Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit by January 31, 2020, the landlord may enforce this Order in the Supreme Court of British Columbia.

As the landlord was successful in his application, I find that he is entitled to recover the \$100.00 filing fee, from the tenant, pursuant of section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. Pursuant to the above, I find that the landlord is entitled to retain \$100.00 from the tenant's security deposit.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective at **1:00 p.m. on January 31, 2020**, which should be served on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlord is entitled to retain \$100.00 from the tenant's security deposit, pursuant to section 72(2) of the *Act*.

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 06, 2020

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Residential Tenancy Branch