



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      **FFT, CNC**

### Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to section 47;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The landlord attended the hearing and had the opportunity to call witnesses and present affirmed testimony and written evidence. The hearing process was explained, and an opportunity was given to ask questions about the hearing process.

The tenant did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional twenty minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant was provided.

The landlord provided affirmed testimony that the landlord was not served by the tenant with the Notice of Hearing and Application for Dispute Resolution. The landlord testified that he called the RTB and learned that the tenant had applied to cancel a One Month Notice to End Tenancy (“One Month Notice”) and that a hearing had been set for this day. The landlord then filed documents and attended the hearing.

Although not served in accordance with section 89 of the *Act*, in consideration of the circumstances and admissible evidence, I find the landlord was sufficiently served pursuant to section 71(2)(c) of the *Act*.

I informed the landlord that in the event I dismissed the tenant's application to cancel the Notice issued in compliance with the Act, I was required under section 55 of the Act to grant an order of possession in favour of the landlord. Section 55 states as follows:

*55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*

*(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*

*(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

#### Issue(s) to be Decided

Is the landlord entitled to an order of possession?

#### Background and Evidence

The landlord provided uncontradicted evidence as the tenant did not attend the hearing. The landlord testified that the tenancy began in 2015. Rent is \$720.00 and the tenant provided no security deposit.

The landlord testified that a fire occurred in the unit on February 17, 2020 causing damage. The landlord contacted the insurer and the fire department. The landlord stated that the insurer and restoration company recommended the unit be vacated because of the damage and possibility of release of toxic chemicals. The landlord requested the tenant to vacate and the tenant refused.

The landlord served the tenant with a One Month Notice dated February 18, 2020 and served that day, although the tenant in his application stated the service took place on February 20, 2020. The landlord submitted a copy of the Notice in which the landlord claimed that the tenant "put the landlord's property at significant risk" and requested vacant possession on March 31, 2020. The landlord filed a witnessed Proof of Service form.

The tenant has not vacated the unit. The tenant filed an Application to cancel the Notice on February 20, 2020 within ten days but has failed to attend the hearing of the tenant's application.

The landlord requested an order of possession.

### Analysis

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

Rule 7.3 of the Rules of Procedure provides as follows:

***7.3 Consequences of not attending the hearing*** – *If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application with or without leave to reapply.*

As the applicant did not attend the hearing and in the absence of any evidence or submissions on behalf of the applicant, I order the tenant's application dismissed without leave to reapply.

As the tenant has failed to appear at this hearing or submit any testimony or evidence, I dismiss the tenant's request to cancel the One Month Notice as well as the other relief requested by the tenant.

Pursuant to section 55(1), the director **must** grant to the landlord an order of possession of the rental unit if the landlord's notice to end tenancy complies with section 52 and the tenant's application is dismissed.

I determine the landlord's Notice complies with section 52. I have dismissed the tenant's application. I therefore find the landlord is entitled to an order of possession.

### Conclusion

I dismiss the tenant's application without leave to reapply.

I grant the landlord an order of possession which is effective two days after service on the tenant.

The landlord must serve this order on the tenant.

If the tenant fails to comply with this order, the landlord may file the order with the Supreme Court of British Columbia enforceable 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: March 16, 2020

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Residential Tenancy Branch