



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Performance Realty Ltd/Performance Property Mgmt  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC FFL

### Introduction

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

- An order of possession pursuant to section 55; and
- Authorization to recover their filing fee from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agent (the "landlord").

As both parties were present service was confirmed. The tenant confirmed receipt of the landlord's 1 Month Notice dated December 5, 2019, the application dated February 24, 2020 and evidence. The tenant did not submit any documentary materials. Based on the testimonies I find that the tenant was served with the landlord's materials in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to recover the filing fee from the tenants?

## Background and Evidence

The rental unit is a suite in a multi-unit complex managed by a strata corporation. A security deposit of \$337.50 was collected at the start of the tenancy and is still held by the landlord.

There have been a series of complaints made about the tenant's behaviour by other occupants of the rental complex. The landlord issued a 1 Month Notice to End Tenancy for Cause dated December 5, 2019 indicating the reasons for the tenancy to end as:

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

- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*

*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 or the landlord;*
- *jeopardize a lawful right or interest of another occupant or the landlord.*

The landlord submitted into evidence a series of warning letters issued by the strata corporation, email correspondence from neighbors complaining about the tenant's behaviour and multiple video recordings showing the tenant and their guests engaging in the behaviour that led to the complaints.

The tenant disputes that there is a basis to end the tenancy and says that the complaints are made by a neighbor with whom they now have a bad relationship. The tenant complained about the video recordings and felt they were an invasion of privacy. The tenant acknowledged that they were served with the 1 Month Notice and did not file any application to dispute the notice. The parties agree that when subsequent rent was paid for this tenancy the landlord has issued correspondence confirming they were being accepted for use and occupancy only and did not reinstate the tenancy.

## Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within 10 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. The tenant confirmed receipt of the 1 Month Notice and said they did not file any application to dispute it. While the tenant

gave unsupported testimony claiming they were ill at the time the notice was served, the tenant confirmed they did not make an application at any time. I find that the tenants have failed to file an application for dispute resolution within the 10 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 ends on the effective date of the 1 Month Notice, January 31, 2020.

I find that the landlord's 1 Month Notice meets the form and content requirements of section 52 of the *Act* as it is in the approved form and clearly identifies the parties, the address of the rental unit, the effective date of the notice and the reasons for ending the tenancy. I find that the landlord has provided sufficient evidence by the documentary materials to support the cause for the tenancy to end.

The 1 Month Notice is dated December 5, 2019 and was issued prior to the *Ministerial Order M089* issued March 30, 2020 pursuant to the State of Emergency declared on March 18, 2020. Therefore, in accordance with section 3(2) of the Ministerial order and pursuant to section 55 of the *Act*, I find that the landlord is entitled to an Order of Possession.

As the landlord's application was successful they are also entitled to recover the filing fee for this application from the tenants.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain \$100.00 of the tenants' \$337.50 security deposit in satisfaction of the monetary award issued in the landlord's favour.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. Should the tenants or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The tenant's security deposit is reduced by \$100.00 from \$337.50 to \$237.50.

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: April 30, 2020

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Residential Tenancy Branch