



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding DELANEY PROPERTIES LTD. and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC, FFL

### Introduction

On July 1, 2020, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession based on a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlord attended the hearing with M.G. attending as a witness for the Landlord. The Tenant did not attend the 17-minute hearing. All in attendance provided a solemn affirmation.

The Landlord advised that the Notice of Hearing and evidence package was served to the Tenant by being posted on her door on July 6, 2020. She did not have a witness, nor did she submit a proof of service to corroborate service. She stated that this package was no longer on the door when she returned to the rental unit after two days. Based on the undisputed, solemnly affirmed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was served the Landlord’s Notice of Hearing and evidence package.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?

- Is the Landlord entitled to recover the filing fee?

### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord advised that the tenancy started on March 1, 2019 and that it is possible that the Tenant has given up vacant possession of the rental unit. Rent is currently established at \$1,075.00 per month and is due on the first day of each month. A security deposit of \$525.00 was also paid. A copy of the written tenancy agreement was submitted as documentary evidence for consideration.

The Landlord advised that the Notice was posted to the Tenant's door on February 25, 2020. The reasons the Landlord served the Notice are because the "Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord" and the "Tenant or a person permitted on the property by the 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". The effective end date of the tenancy on the Notice was March 31, 2020. She advised that the reason she did not make this Application sooner was due to the COVID pandemic.

She stated that the Tenant had been dealing drugs through the window of the rental unit and that there have been many complaints from the strata manager and other residents of the building about the Tenant's behaviours and actions.

M.G. advised that there have been many complaints since December 2019 or January 2020, "almost daily" for "months and months", from the strata manager and other residents of the building. She stated that some residents have moved out because of the Tenant's actions and on one occasion, a guest of the Tenant was involved in a fist fight with another resident of the building. She stated that the Tenant or her guests had been observed to have spray painted the halls and to have urinated in them as well. She also stated that warning letters were served to the Tenant and she was called multiple times in an effort to be reasoned with; however, the Tenant denied being responsible for any of the accusations despite these being captured on video surveillance.

The Landlord advised that the reason that complaints from residents were not submitted was to protect the identities and safety of the residents of the building as the Tenant and her associates were “known to police”.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

With respect to the Notice served to the Tenant on February 25, 2020, I have reviewed this Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I find that this Notice meets all of the requirements of Section 52.

The undisputed evidence is that the Notice was posted to the Tenant’s door on February 25, 2020. As per Section 90 of the *Act*, the Notice would have been deemed received by February 28, 2020. According to Section 47(4) of the *Act*, the Tenant has 10 days to dispute this Notice, and Section 47(5) of the *Act* states 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 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.”*

After being deemed to have received the Notice, the tenth day fell on Monday March 9, 2020 and the undisputed evidence is that the Tenant did not make an Application to dispute this Notice. I find it important to note that the information with respect to the Tenant’s right to dispute the Notice is provided on the second page of the Notice.

Ultimately, as the Tenant did not dispute the Notice, I am satisfied that the Tenant is conclusively presumed to have accepted the Notice. However, I must still determine whether the reasons the Landlord served the Notice are valid. While the Landlord and M.G. have provided consistent, solemnly affirmed testimony, I find it important to note that they have provided no evidence to support their testimony, and from their statements, it appeared as if there were many different materials available to choose from to submit: video surveillance evidence, warning letters to the Tenant, complaints from the strata manager or other residents. Any of these items could have helped substantiate the testimony provided to support justification of the Notice.

Despite this lack of evidence, I am satisfied from the combined solemnly affirmed, undisputed testimony that the reasons stipulated on the Notice have been justified, on a balance of probabilities. Ultimately, as the Tenant was conclusively presumed to have accepted the Notice, and as I am satisfied of the reasons the Notice was served, I find that the Landlord is entitled to an Order of Possession. I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant.

As the Landlord was successful in her claims, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. Pursuant to Sections 67 and 72 of the *Act*, I allow the Landlord to retain a portion of the security deposit in satisfaction of this debt outstanding.

### Conclusion

I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. This Order must be served on the Tenant by the Landlord. 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.

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: July 30, 2020

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Residential Tenancy Branch