



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, FFL

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for an Order of Possession for Cause, based on a One Month Notice to End Tenancy for Cause dated June 30, 2020 ("One Month Notice"), and to recover the \$100.00 cost of their Application filing fee.

The Tenant and the Landlord, P.P., appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing. However, I note that the Tenant acknowledged that she had not submitted any evidence to the RTB.

### Preliminary and Procedural Matters

The Parties confirmed their email addresses at the outset of the hearing, as well as their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

.

Issue(s) to be Decided

- Is the Landlord entitled to an order of possession?
- Is the Landlord entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on September 15, 2019, with a monthly rent of \$700.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$350.00, and no pet damage deposit.

In the hearing, the Landlord said:

When [the Tenant] came in, she didn't pay a pet deposit. We were told there are no pets. She has acquired 4 or 5 pets. The feces are not being taken out – there's a stench coming through her door. It's not fair to the other tenants. We had a discussion with her father. He said if the cats have to go, she goes. Then Covid happened.

Then the apartment smoke alarm started beeping. We did call [a fire inspection company], but she wouldn't let them in. She never answered the door and she won't answer her phone. When we give 24-hour notice for an inspection, she takes it from door and leaves a note saying she is self-isolating for 14 days, after coming back from the States. She is not self-isolating, because she puts things into the lobby and goes in and out. She still won't let anyone in to inspect the fire alarm. We would be liable by law if there were a fire. It's an electrical problem and getting in for a repair is not happening.

The Tenant said:

The two they wrote down are incorrect. The smoke alarm started chirping. No one has ever asked to enter the unit. I don't answer my door, because it's a safety issue; I'm disabled. No one ever asked. To say I refused to let them in is not true. There was no notice posted on my door nor a verbal notice of any sort. I would have let them. There's been a couple times when my phone was not working – I hadn't topped it up - so if they tried to call when it was not paid up, that might have been what happened. They can always post a note on the door.

He did give me a 24-hour notice for an inspection, but didn't say anything about the alarm. He just tries to bully me about the boxes.

I have four cats. In the tenancy agreement I was never asked for a pet deposit. She said she would talk to my Dad instead of me. I'm 52-years-old and I can answer my own questions. They knew I had pets, .... My dad told him. My sister lives in the building and she had one, and they're okay with cats. I was having to board them for awhile. My Dad said he did mention it.

The Landlord said:

The conversation never took place with the father. Her sister was a tenant of ours. Her father said, if another apartment opens, I have another daughter who needs a place. It's a 55-year-old unit age-wise, but we made an exception for her. She was asked about pets, because we went down the form or agreement. She said she had no pets. Even when she did acquire a pet, she should have informed us. We found out about the pets when her fridge needed fixing. . . the manager saw cats roaming around.

Intermittently, I can hear that smoke detector still going off.

I asked her for the pet deposit, but she didn't acknowledge it at all. 'I don't have the money.' She can be quite rude with my husband - pushes past him and says you shouldn't be talking to me.

The Tenant said:

I was never asked for [a pet damage deposit]. I didn't acquire the cats until after I moved in. There was no reason why my Dad would lie to him, because he knows cats are allowed. I sat down with the building manager, and he said sign here, initial there. It had been filled out by [the Landlord], I guess. So, he didn't check off pet deposit. The manager knew I had cats. I was never asked, not verbally, not in the agreement, not true.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

I have found some of the Tenant's testimony to be internally inconsistent. She said she was not asked about a pet or a pet damage deposit. She said I didn't acquire the cats until after she moved in. She also said: "There was no reason why my Dad would lie to him, because he knows cats are allowed." I infer this implies that the Tenant's father was asked if she had a pet when he was enquiring about the rental unit for his daughter. This conflicts with the Tenant's evidence that she was not asked about pets or a pet damage deposit. Further, the Tenant said that she would not answer her door for safety reasons; however, she said she was given an inspection notice, but that it did not mention the alarm as a reason for the inspection. Still, the Tenant did not dispute that she would not answer her door when the fire inspection person attended her unit. Overall, I find that I prefer the veracity of the Landlord's evidence over that of the Tenant.

Regardless of these findings, pursuant to section 90 of the Act, I find that the Tenant was deemed served with the One Month Notice on July 3, 2020, three days after it was posted to the door of the rental unit.

Section 47 of the Act states that if a tenant who has received a One Month Notice does not apply for dispute resolution within ten 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.

Although the One Month Notice states that the effective date of the notice is August 1, 2020, given the date on which the One Month Notice was deemed served, I find that this date does not comply with the minimum notice period required under section 53 of the Act. As a result, I find that the effective date of the One Month Notice is automatically corrected to September 30, 2020, pursuant to section 53 of the Act.

As there is no evidence before me that the Tenant disputed the One Month Notice by applying to RTB to do so, I find that she is conclusively presumed under section 47(5) of the Act to have accepted the One Month Notice. I find that the tenancy, therefore, ends on September 30, 2020. As a result, the Order of Possession will therefore be effective on **September 30, 2020**.

I also find that the Landlords are entitled to recovery of the \$100.00 filing fee pursuant to section 72 of the Act, which they are authorized to retain from the Tenant's security deposit, under section 72(2)(b) of the Act.

Conclusion

Pursuant to section 55 of the Act, I grant an **Order of Possession** to the Landlords effective September 30, 2020, after service on the Tenant. The Landlords are provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible.

Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to section 67 of the Act, I award the Landlords with \$100.00 in recovery of the Application filing fee. The Landlords are authorized to deduct \$100.00 from the Tenant's \$350.00 security deposit in full satisfaction of this award, pursuant to section 72 of the Act.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: September 15, 2020

---

Residential Tenancy Branch