



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, FFL

### Introduction

On August 25, 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 S.M. attending as an agent for the Landlord and R.K. attending as a witness for the Landlord. None of the Tenants attended at any point during the 25-minute hearing. All in attendance provided a solemn affirmation.

S.M. advised that three separate Notice of Hearing and evidence packages were served to the Tenants by being posted to their door on August 26, 2020. He did not have a witness, nor did he submit a proof of service form to corroborate service. However, he stated that he observed these packages being removed from the door before he left the property. Based on the undisputed, solemnly affirmed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenants were served the Landlord’s Notice of Hearing and evidence packages. As such, I have accepted the Landlord’s evidence and will consider it when rendering this Decision.

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.

S.M. advised that the tenancy started on February 1, 2018, that rent is currently established at \$2,500.00 per month, and that it is due on the first day of each month. A security deposit of \$1,250.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

He advised that the Notice was served by hand on July 29, 2020, to an adult who apparently resides with the Tenants. He did not have a witness, nor did he submit a proof of service form to corroborate service. The reasons the Landlord served the Notice are as follows.

- The Tenants or a person permitted on the property by the Tenants:
  - Have 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; and/or
  - Put the Landlord's property at significant risk.
- The Tenants or a person permitted on the property by the Tenants have engaged in illegal activity that has, or is likely to:
  - Damage the Landlord's property;
  - Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the Landlord; and/or
  - Jeopardize a lawful right or interest of another occupant or the Landlord.
- The Tenants or a person permitted on the property by the Tenants have caused extraordinary damage to the unit/site or property/park.

The effective end date of the tenancy on the Notice was noted as August 31, 2020. Only pages one and three of the Notice, plus a Schedule of Parties, were submitted by the Landlord as documentary evidence. A copy of the entire Notice was requested to the Landlord to be submitted for my consideration.

S.M. testified that there have been at least 20 calls to the police in 2020 regarding incidents that have occurred on the property. The Tenants, or guests of the Tenants, have been involved in many high-speed chases from the area. The Landlord is subject to potential fines related to the numerous police calls to this property. In addition, the Landlord has been served with multiple warning letters from the municipality because the rental unit has been deemed a nuisance property. Moreover, a stolen vehicle was recovered from the property. Documentary evidence was submitted to support the Landlord's position on these incidents.

C.K. advised that he and a by-law officer met with the Landlord to outline the severity of this tenancy situation and the Landlord's culpability for events that have transpired as a result of his Tenants. He advised that the police have recorded 78 separate files about this rental unit in 2020, and 212 separate files since the tenancy started. There have been three separate search warrants that have been executed on the rental unit since July 15, 2019 and there was also a trafficking investigation that took place in November 2019.

Furthermore, there have been seven separate incidents of people from the rental unit fleeing from police, at a high rate of speed, in their vehicles, with the last incident being September 9, 2020. Given that this is a residential neighbourhood with many families, a park, a church, a temple, and an elementary school in the area, these high-risk flights pose a serious threat to public safety. Five police files have been recorded in October and there is an arrest warrant that has been issued against one of the people involved in this rental unit. He advised that he would not ordinarily attend a Dispute Resolution hearing as a witness; however, his presence during this proceeding speaks to the serious nature of these incidents.

### 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.

During the hearing, as the Landlord did not submit an entire copy of the Notice for consideration, I was unable to view the relevant Notice to determine if it complied with Section 52 of the *Act*. In accordance with Rule 3.19 of the Rules of Procedure, I provided direction on requesting late evidence to the Landlord. A copy of the Notice, that is the subject of this dispute, was requested to be provided from the Landlord as it is essential to the matter at hand.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

After the hearing, the Landlord uploaded the same aforementioned pages one and three of the Notice, plus a Schedule of Parties, and then inexplicably separately uploaded only page three of the Notice. The required page two of the Notice was never submitted. Despite the Landlord's inability to provide the requested second page, I have reviewed the pages of the Notice that were provided to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied from S.M.'s solemnly affirmed testimony that the reasons above that he outlined for service of the Notice were checked off on this second page. Given that the Details of Dispute outline why the Notice was served, I find that this Notice meets all of the requirements of Section 52.

The undisputed evidence is that the Notice was served by hand on July 29, 2020. According to Section 47(4) of the *Act*, the Tenants have 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 served the Notice, the tenth day fell on Saturday August 8, 2020 and the Tenants must have disputed this Notice by Monday August 10, 2020 at the latest. The undisputed evidence is that the Tenants did not make an Application to dispute this Notice. I find it important to note that the information with respect to the Tenants' right to dispute the Notice is provided on the third page of the Notice.

Ultimately, as the Tenants did not dispute the Notice, I am satisfied that the Tenants are conclusively presumed to have accepted the Notice. However, I must still determine whether the reasons the Landlord served the Notice are valid.

Based on the consistent, solemnly affirmed testimony, and the supporting documentary evidence, I am satisfied from this undisputed testimony that the reasons stipulated on the Notice have been justified, on a balance of probabilities. Ultimately, as the Tenants were 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 Tenants.

As the Landlord was successful in his 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 Tenants. This Order must be served on the Tenants by the Landlord. Should the Tenants 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: October 8, 2020

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Residential Tenancy Branch