



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **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
- an order authorizing the recovery of the filing fee from the tenant for this application pursuant to section 72.

The tenant did not attend this hearing; however, a legal advocate and his social worker attended the hearing on his behalf. The landlord attended the hearing as well. All parties were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The parties confirmed that they exchanged their documentary evidence.

### Issues(s) to be Decided

Is the landlord entitled to an Order of Possession pursuant to a One Month Notice to End Tenancy for Cause?

Is the landlord entitled to the recovery of the filing fee for this application?

### Background and Evidence

The tenancy began on or about November 1, 2016. Rent in the amount of \$598.60 is payable in advance on the first day of each month. At the outset of the tenancy the tenant paid a security deposit of \$275.00. The landlord issued a One Month Notice to End Tenancy for Cause on September 30, 2020 for the following reasons:

*(d) the tenant or a person permitted on the residential property by the tenant has*

*(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*

*(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or*

*(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that*

*(ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or*

The landlord testified that the tenant goes out to smoke numerous times during the night from 11:00 p.m. to 3:00 a.m. and makes excessive noise with his walker to get outside. The landlord testified that the tenant props the exterior door open which is a security risk. On several occasions the tenant left the door open creating a security breach in this senior only complex. The landlord testified that she has received numerous complaints from the tenant that lives below the subject tenant that he is constantly making banging and thudding noises. The landlord testified that she has tried to be as patient as possible with the tenant however, she has a responsibility to ensure all tenants have a safe and peaceful home. The landlord requests an order of possession.

The advocate made the following submissions. The advocate submits that she confirms and acknowledges that the tenant has not filed an application to dispute the notice to end the tenancy and that the Act dictates a conclusive presumption that the tenant has accepted the notice and that the tenancy is ended. The advocate submits that that tenant has Parkinson's disease and is actively seeking relocation to a facility that can assist him and that if given more time, a more beneficial outcome will be had by both parties.

The tenant's social worker made the following submissions. The social worker submits that the tenant is on a waiting list to get into assisted living housing, however, the wait time for that to happen is 3-6 months. The social worker submits that she is concerned about the tenant as she has lost contact with him since Friday and is concerned that he

may be hospitalized. The social worker submits that the tenant's condition is what has caused all the issues and that he has compromised strength, mobility and speech. The social worker requests the time needed to allow the tenant to secure an assisted living arrangement.

### Analysis

At the outset of the hearing, the issue of the timing of the tenant's application arose. It was noted that section 47(4) of the *Act* provides that a tenant who receives a notice to end tenancy for cause has 10 days to dispute it. Further, section 47(5) of the *Act* confirms that failure to dispute the notice in the required time period results in the conclusive presumption that the tenant has accepted the tenancy ends on the effective date of the notice.

In this case, the advocate agreed and confirmed that the One Month Notice to End Tenancy for Cause was personally served on September 30, 2020 to the tenant. Furthermore, the advocate agreed and confirmed that they did not file an application to dispute the notice even though they have been aware of the notice since November 1, 2020.

Although the tenant did not file an application to dispute the notice, **the parties were given a full opportunity to be heard and all evidence and testimony was considered in making a decision.** The landlord provided extensive documentation to support the issuance of the Notice, including complaint letters and incident reports. The landlord testified that despite this issue being brought to the tenants attention, his behaviour has gotten worse. I find that the tenant did significantly interfere with other occupants by disturbing them at all hours of the night on a continuous basis despite written and verbal warnings to him. In addition, I find that the tenant put the landlord's property at risk by propping the exterior door open and leaving it open therefore compromising the security of the building.

The social worker submits that it would be discriminatory to end this tenancy because of the tenant's health condition. The landlord stated that she was insulted by this accusation as she has dozens of other tenants to protect and that many of them are in their 80's and 90's and that she has a responsibility to protect them and not just this one tenant. For absolute clarity, this tenancy is being terminated because of the tenant's actions, not because of his medical issues. I do not find that the landlord acted in a discriminatory manner based on the evidence before me. I find that the landlord has provided sufficient evidence to show that this tenancy must end on a balance of

probabilities. I find that the One Month Notice to End Tenancy for Cause is confirmed, the tenancy is terminated. The effective date of the notice is October 31, 2020.

Under these circumstances, the landlord would be entitled to an order of possession that takes effect 2 days after being served on the tenant, however, the landlord was sympathetic to the tenants' situation and indicated that the order of possession could be delayed until 1:00 p.m. on February 28, 2021. The landlord is granted an order of possession pursuant to section 55 of the Act.

The landlord is entitled to retain \$100.00 from the security deposit in full satisfaction for the filing fee.

### Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective at **1:00 p.m. on February 28, 2021**, which should be served on the tenant. 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: February 01, 2021

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Residential Tenancy Branch