



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding REALSTAR MANAGEMENT and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for an Order of Possession for Cause pursuant to sections 47 and 55.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:30 a.m. to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord attended the hearing, represented by BC ("landlord"). The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified that she served the tenant with the Application for Dispute Resolution Proceedings Package by posting it to the tenant's door on January 5, 2021, the same day the Notice of Dispute Resolution Proceedings was emailed to her by the Residential Tenancy Branch. In accordance with sections 89 and 90 of the *Act*, the tenant is deemed served with the Application for Dispute Resolution Proceedings Package on January 10, 2021, five days after it was posted to the tenant's door on January 5, 2021. This hearing was conducted in the absence of the tenant.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession for cause?

### Background and Evidence

A copy of the tenancy agreement was provided as evidence. The tenancy began on June 1, 2018 with rent set at \$1,026.00, including parking, payable on the first day of

each month. The tenancy agreement includes a clause 47 which prohibits smoking on the residential property, including inside the rental unit.

The landlord has been receiving complaints of the tenant smoking in her unit and provided copies of complaints sent to her in the landlord's evidence package. The landlord had personally attended at the tenant's unit and smelled cigarette smoke emanating from the tenant's unit on several occasions. The landlord provided a "comment sheet" of her own instances of detecting smoke from the tenant's unit as evidence.

The landlord gave the tenant notices and warnings about the smoking on August 12, 2019, March 6, 2020 and April 20, 2020. The landlord testified the tenant would discontinue smoking in her unit for a day or two before recommencing the smoking in her unit shortly thereafter.

On December 1, 2020, the landlord served the tenant with a One Month Notice to End Tenancy for Cause by posting it to the tenant's door. The landlord provided a signed, witnessed proof of service document to prove service on that date. A copy of the notice to end tenancy was also provided as evidence. The reason for ending the tenancy states it's for a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. Under "details of cause" the landlord states "she is constantly smoking in her suite. This is a non smoking building".

The landlord testified that since serving the notice to end tenancy, the tenant has not served her with an application to dispute it. After being served with the notice to end tenancy, the tenant has continued to pay rent however since rent is paid through pre-authorized debit, no receipts are provided to the tenant. The landlord testified she not given the tenant any indication that paying rent reinstitutes the tenancy.

### Analysis

The tenant is deemed to have been served with the landlord's One Month Notice to End Tenancy for Cause on December 4, 2020, three days after December 1, 2020, the day it was posted to the tenant's door in accordance with sections 88 and 90 of the *Act*.

Sections 47(3)(4) and (5) of the *Act* state:

(3) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

(4) A tenant may dispute a Notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the Notice.

(5) 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

- a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and
- b) must vacate the rental unit by that date.

I find that the tenant was served with a Notice that complies with section 52 of the *Act*. Although the tenant had the opportunity to do so, she did not file an application to dispute the Notice within 10 days, by December 14, 2020, or attend the scheduled Dispute Resolution Hearing. Since the tenant did not file for dispute resolution, she is conclusively presumed to have accepted that the tenancy ends on the (corrected) effective date of the Notice and must move out of the unit. Since the Notice was deemed served on December 4, 2020 and rent is payable on the first day of the month, the earliest effective date for this Notice would have been January 31, 2021. The effective date is automatically corrected to that date in accordance with section 53 of the *Act*. As this date has passed, the landlord is entitled to an order of possession effective 2 days after service upon the tenant.

#### Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced in 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: March 23, 2021

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Residential Tenancy Branch