



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SANFORD HOUSING SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

Landlord's application: OPC

Tenant's application: CNC – MT, OLC

### **Introduction**

This hearing was scheduled for 1:30 p.m. on this date, via teleconference call, to deal with a landlord's application filed on January 6, 2021 for an Order of Possession based on a One Month Notice to End Tenancy for Cause dated November 27, 2020.

On January 20, 2021 the tenant filed an application seeking to cancel the One Month Notice to End Tenancy for Cause; an extension of time to file the application; and, orders for the landlord to comply with the Act, regulations, or tenancy agreement.

Only the landlord's agent appeared for the hearing. I left the teleconference call open until 2:00 p.m. to give the tenant opportunity to connect to the hearing; however, the tenant did not call into the hearing before the hearing by that time.

With respect to the landlord's hearing materials, the landlord submitted that the landlord's proceeding package was served to the tenant in person on January 8, 2021 at the rental unit by the property manager appearing before me and witnessed by another property manager. The landlord provided a signed Proof of Service.

The landlord also sent the proceeding package to the tenant via registered mail on January 8, 2021 and a search of the registered mail tracking number showed the registered mail was delivered on January 10, 2021. A registered mail receipt, including tracking number, was provided as evidence.

The landlord also sent supporting materials and evidence to the tenant via registered mail on March 12, 2021 and as of the date of this hearing the package had not been

picked up by the tenant. The landlord provided a registered mail receipt, including tracking number, and a print-out of the tracking report from the Canada Post website as proof of service.

I was satisfied that the tenant was duly served with the landlord's proceeding package on January 8, 2021 in person and by registered mail on January 10, 2021; and, in keeping with section 90 of the Act, I find the tenant to be deemed served with the landlord's evidence package five days after mailing, even if the tenant refused to accept or pick up his mail. Accordingly, I proceeded to hear the landlord's application without the tenant present.

As for the tenant's application, the tenant did not provide any proof of service for me to review. The landlord's agent testified that the landlord was not served with the tenant's proceeding package and the landlord was unaware of what the tenant had filed. Since an applicant bears the burden to prove service of their proceeding package, and the tenant failed to prove service occurred, I dismissed the tenant's application and did not give it further consideration.

#### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

#### Background and Evidence

The landlord submitted a copy of a fixed term tenancy agreement for a tenancy set to commence on May 16, 2013 and expire on October 31, 2013. The landlord submitted a second fixed term tenancy agreement for a tenancy set to commence on November 1, 2013 and expire on March 31, 2014. The landlord's agent testified that upon expiry of the second fixed term the tenancy continued on a month to month basis. I also heard that the rent is subsidized by BC Housing and that the tenant's rent obligation \$375.00 payable by the first day of every month.

On November 27, 2020 the landlord issued a One Month Notice to End Tenancy for Cause to the tenant with a stated effective date of December 31, 2020 ("the 1 Month Notice"). The landlord's agent testified that the 1 Month Notice was given to the tenant in person on November 27, 2020 but the tenant refused to sign the Proof of Service so the landlord proceeded to send another copy of the 1 Month Notice to the tenant via registered mail on November 27, 2020. The landlord provided a registered mail receipt, including tracking number, as proof of service. A search of the registered mail tracking

numbers shows the tenant did not pick up the registered mail despite Canada Post leaving a notice card.

I noted that the landlord had uploaded two copies of the 1 Month Notice as evidence for this proceeding; one of which was not signed by the landlord and the other was signed by the landlord's agent. The landlord's agent affirmed that the 1 Month Notice given to the tenant was signed by the landlord's agent.

After serving the tenant with the 1 Month Notice the landlord has continued to receive rent monies from the Ministry on behalf of the tenant but the landlord has issued receipts to the tenant indicating acceptance of the monies is for use and occupancy only.

The landlord was not served with a tenant's Application for Dispute Resolution to dispute the 1 Month Notice.

The landlord requested an Order of Possession effective by April 30, 2021.

### Analysis

Upon consideration of all of the unopposed evidence before me, I provide the following findings and reasons.

The landlord's agent affirmed that the tenant was served with a signed copy of the 1 Month Notice by giving a copy to the tenant in person on November 27, 2020 and sending a copy to the tenant by registered mail on that same date. I accept the landlord's unopposed and affirmed evidence as to service of the 1 Month Notice upon the tenant and I find the tenant duly served with the 1 Month Notice in person on November 27, 2020 and I find the tenant is deemed to have received the 1 Month Notice by registered mail five days after mailing, as provided under section 90 of the Act.

Upon review of the signed 1 Month Notice, I am satisfied that it is in the approved form and it meets the form and content requirements of section 52 of the Act.

Where a tenant is served with a 1 Month Notice, the tenant has 10 days to file an Application for Dispute Resolution to dispute the notice; otherwise, the tenant is conclusively presumed to have accepted that the tenancy will end and must vacate the rental unit by the effective date, as provided under section 47(5) of the Act.

The tenant did not file to dispute the 1 Month Notice within 10 days of receiving the 1 Month Notice or being deemed in receipt of the 1 Month Notice, and in keeping with section 47(5) of the Act, I find the tenant is conclusively presumed to have accepted that the tenancy would end.

Section 55 of the Act provides the circumstances when a landlord may obtain an Order of possession.

Section 55(2)(b) provides as follows:

(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

(b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired

Given all of the above, I find I am satisfied that the criteria of section 55(2)(b) have been met and I grant the landlord's request for an Order of Possession effective April 30, 2021.

### Conclusion

The landlord is provided an Order of Possession effective April 30, 2021 to serve and enforce upon the tenant.

The tenant's application is dismissed without leave to reapply.

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: April 01, 2021

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Residential Tenancy Branch