



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Victoria Cool Aid Society  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC

### Introduction

This hearing dealt with a landlord's application for an Order of Possession.

Both the landlord's agents and the tenants appeared for the hearing. It should be noted that at the start of the hearing the tenants were not present on the conference call. The landlord's agent informed me that the tenants were going to be calling in late. I waited approximately 15 minutes for the tenants to join the conference call and while waiting I did not hear any evidence from the landlord. The hearing proceeded once the tenants appeared.

The parties were affirmed and the parties were ordered to not record the proceeding.

I confirmed the tenants were in receipt of the landlord's proceeding package and the landlord's evidence package. I also confirmed that the tenants had not submitted or served any evidence prior to the hearing.

The hearing process was explained to the parties and the parties were given the opportunity to ask questions about the process.

Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

### Background and Evidence

Under a non-profit and supportive housing tenancy agreement, the tenants are required to pay a portion of the \$635.00 monthly rent. After subsidy, the tenants have been paying rent of \$510.00 on the first day of every month. The landlord is also holding a security deposit of \$375.00.

It is agreed that on February 19, 2021 the tenants were served with a One Month Notice to End Tenancy for Cause ("1 Month Notice"). The 1 Month Notice has a stated effective date of March 31, 2021 and was in the approved form and duly completed. The tenants did not file an Application for Dispute Resolution to dispute the 1 Month Notice and the tenants continue to occupy the rental unit.

As documentary evidence, the landlord provided a copy of the 1 Month Notice and a written time line of events as reported by the landlord by another tenant and the landlord's observations of video recording.

The tenant stated she intended to respond to the allegations that are described on the 1 Month Notice and in the landlord's evidence during this hearing. I did not permit the tenants to provide such submissions as that would be relevant if the tenants filed to dispute the 1 Month Notice and the time limit for disputing the 1 Month Notice expired long ago.

I gave the parties my preliminary findings orally that the tenancy ended effective March 31, 2021 and the landlord is entitled to regain possession of the rental unit. I asked the parties to provide me with submissions concerning the effective date for the Order of Possession. The landlord initially requested an effective date of June 30, 2021 but subsequently stated the landlord would be willing to go to July 16, 2021 at the latest considering the alleged thievery from other occupants is on-going. The tenant denied they were thieving and stated she has lived at the property for 10 years; the tenants are seniors; and, on disability income.

## Analysis

This Application for Dispute Resolution is being made under section 55(2)(b) of the Act, which provides as follows:

### **Order of possession for the landlord**

(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;

In this case, it is unopposed that the landlord served the tenants with a One Month Notice to End Tenancy for Cause ("1 Month Notice") on February 19, 2021, in person. Upon review of the 1 Month Notice, I find it is in the approved form and is duly completed. In other words, it meets the form and content requirements of section 52 of the Act.

Under section 47(4) of the Act, a tenant in receipt of a 1 Month Notice has 10 days to file an Application for Dispute Resolution to dispute the notice.

Section 47(5) of the Act provides that if a tenant does not file to dispute the 1 Month Notice within 10 days, the tenant is:

(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.

[my emphasis underlined]

Section 66 of the Act provides an Arbitrator discretion to extend a timeline to file an Application for Dispute Resolution to dispute a notice to end tenancy in "exceptional circumstances"; however, subsection (3) provides that *the Director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.*"

Considering the tenants did not file to dispute the 1 Month Notice within 10 days of receiving the 1 Month Notice, and an extension is not even possible at this time, I find the tenants to be conclusively presumed to have accepted that the tenancy would end on March 31, 2021 and the were required to vacate the rental unit by that date, pursuant to section 47(5) of the Act.

In light of all of the above, I find the criteria of section 55(2)(b) have been met and the landlord is entitled to an Order of Possession.

As for the effective date of the Order of Possession, I have considered the requests of both parties. Given the landlord's obligation to protect the quiet enjoyment of all of its tenants and the seriousness of the allegations, although not proven, I find the landlord's request for an Order of Possession effective on July 16, 2021 to be reasonable especially when I consider the tenants have had the 1 Month Notice in their possession since February 19, 2021 and the date of this proceeding. Therefore, I provide the landlord with an Order of Possession effective July 16, 2021.

#### Conclusion

The landlord is provided an Order of Possession effective on July 16, 2021.

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: June 23, 2021

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Residential Tenancy Branch