



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPC, FFL

### Introduction

The landlord filed an Application for Dispute Resolution (the “Application”) on June 9, 2021 seeking an order of possession for the rental unit. They also seek reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on October 7, 2021. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The landlord gave the tenant notice of this dispute resolution by posting it to the tenant’s door. In the hearing the landlord advised this took place on the same day they received that document from the Residential Tenancy Branch. The landlord provided their evidence to the tenant at the same time. From this account – affirmed as truth by the landlord at the start of the hearing – I am satisfied the tenant received proper notice of this participatory hearing.

The tenant did not provide document evidence for this hearing and did not attend to give testimony.

### Issues to be Decided

Is the landlord entitled to an Order of Possession pursuant to s. 55 of the *Act*?

Is the landlord entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

### Background and Evidence

The landlord submitted a copy of the residential tenancy agreement which the parties signed on January 18, 2021. The rent amount, which did not vary, was \$375 per month. The tenant paid a \$395 security deposit at the start of the tenancy. Of note specifically to the issue at hand is a specific “No Smoking Clauses” page forming part of the agreement and signed by the tenant.

The landlord submitted a copy of the One-Month Notice to End Tenancy for Cause (the “One-Month Notice”) dated April 15, 2021. This was served to the tenant by affixing it to the door of the rental unit. The reason indicated by the landlord is a breach of a material term of the tenancy agreement. Details provided include the neighbours’ complaints about cigarette smoke/smell coming from the rental unit. There were written warnings to the tenant, also provided in the evidence.

The One-Month Notice provides that the tenant had ten days from the date of service to apply for Dispute Resolution or the tenancy would end on the stated effective date of May 31, 2021. In the hearing, the landlord stated they did not receive any notice from the tenant that they were challenging the landlord on issuing the One-Month Notice.

The tenant did not attend the hearing. There is no documentary evidence of the tenant submitted to respond to the reasons for the issuance of the One Month Notice.

### Analysis

The *Act* s. 47 allows a landlord to end a tenancy by giving notice to end the tenancy if any of the conditions applies to the situation.

Following this, s. 47(4) allows a tenant who receives a notice to end tenancy 10 days to submit an Application for Dispute Resolution to cancel the notice. Then s. 47(5) stipulates that if a tenant fails to apply within 10 days, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and they must vacate the rental unit.

I have reviewed the Notice, and I find it complies with the form and content requirements of s. 52 of the *Act*. I find that the tenant did not dispute the Notice within

ten days, pursuant to s. 47(4). I find that the tenant is conclusively presumed to have accepted that the tenancy has ended in accordance with s. 47(5).

I find the landlord has the authority to issue the Notice under s. 47 of the *Act*. I grant the landlord's request for an Order of Possession under s. 55 of the *Act*.

Because the landlord was successful in their Application, I find they are eligible to reimbursement of the Application filing fee.

### Conclusion

I grant an Order of Possession to the landlord effective **TWO DAYS after service of this Order** 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.

Pursuant to s. 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$100, for recovery of the filing fee for this hearing application. The landlord is provided with this Order in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: October 7, 2021

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Residential Tenancy Branch