



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1371 BLACKWOOD STREET  
HOLDINGS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **OPC, FFL (landlord) CNC-MT, FFT (tenant)**

### **Introduction**

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for possession under a One Month Notice to End Tenancy for Cause ("One Month Notice") pursuant to sections 47 and 55;
- Authorization to recover the filing fee for this application pursuant to section 72.

This hearing also dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of One Month Notice to End Tenancy for Cause ("One Month Notice") pursuant to section 47;
- A request for more time to cancel the Notice to End Tenancy pursuant to section 66;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The agents KC and SW attended on behalf of the landlord ("the landlord"). The landlord had the opportunity to call witnesses and present affirmed testimony and written evidence. The hearing process was explained, and the landlord was given an opportunity to ask questions about the process.

The landlord was informed that no recording of the hearing was permitted. They confirmed they were not recording the hearing.

The tenant did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 12 minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant was provided.

*Application by Tenant and Service by Tenant upon Landlord*

The landlord testified they were not served with any documents by the tenant and did not receive notice of the hearing of the tenant's claim.

The tenant did not attend, and no evidence was submitted by the tenant with respect to the tenant's application.

Rule 7.3 of the Rules of Procedure provides as follows:

***7.3 Consequences of not attending the hearing – If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application with or without leave to reapply.***

As the tenant did not attend the hearing and in the absence of any evidence or submissions for the tenant, I order the tenant's application dismissed without leave to reapply.

*Service by Landlord upon Tenant*

As the tenant did not attend the hearing, I asked the landlord to confirm that the tenant was served with the Notice of Hearing and Application for Dispute Resolution for this hearing for the landlord's claims.

The landlord testified they sent the documents to the tenant by registered mail on August 11, 2021 and again on August 17, 2021, thereby effecting service under section 90 (five days after mailing) on August 16, 2021. The landlord provided the tracking numbers for the mailings and submitted copies of the receipts.

Section 15 of *Residential Tenancy Policy Guideline #12. Service Provisions* explains the requirement for proof of service, as follows, in part:

Where proof of service is required, the person who actually served the documents must either:

- be available as a witness in the hearing to prove service, or
- provide a signed statement with the details of how the documents were served.

As the landlord testified to the date and time of service, the method of service, location of service, and the specifics of the documents served, I find that the landlord has proven service of the Notice of Hearing and Application for Dispute Resolution on the tenant.

As such, I find that each tenant was served with the Notice of Hearing and Application for Dispute Resolution in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession and reimbursement of the filing fee?

Background and Evidence

The landlord provided the following uncontradicted testimony as the tenant did not

attend the hearing.

The landlord submitted a copy of the tenancy agreement and testified to the background of the tenancy as follows:

INFORMATION	DETAILS
Type of tenancy	1-year fixed term
Date of beginning	December 1, 2020
Monthly rent payable on 1 <sup>st</sup>	\$1,750.00
Security deposit held by landlord	\$875.00

The landlord testified that the tenant was served with the landlord's One Month Notice ("**Notice**") by posting to the tenant's door June 25, 2021 thereby effecting service under section 90 on June 28, 2021.

The landlord submitted a copy of the Notice. The Notice is in the standard RTB form and lists two grounds for ending the tenancy:

1. *Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:*
  - a. *damage the landlord's property.*
  - b. *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.*
  - c. *Jeopardize a lawful right or interest of another occupant or the landlord.*
2. *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

The Notice states an effective move-out date of July 31, 2021.

The Notice provided that the tenant may dispute the Notice within ten days of service. The tenant filed a dispute on August 3, 2021 outside the period. I have dismissed the tenant's application to dispute the Notice.

The landlord testified the tenant's unit is in a 15-unit building in a municipality which has

a bylaw prohibiting feeding of wildlife for which the landlord may be fined. Nevertheless, the tenant feeds wildlife, leaving food scraps on the premises. The landlord has given the tenant three warnings in writing, all of which were submitted. The landlord testified they met with the tenant to implore her to stop the unlawful wildlife feeding. They informed the tenant that the wildlife attracted by the food damages the lawn and plants. As well, the wildlife is potentially dangerous, and disturbs other tenants. The tenant ignored all warnings and requests.

The landlord submitted supporting documentary evidence including photographs, a copy of the bylaw, and a written statement.

The landlord requested an Order of Possession upon two days notice.

### Analysis

I find the tenant is deemed served with the Notice on July 28, 2021.

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

*(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.*

Based on the landlord's testimony and the Notice before me, I find that the tenant was served with an effective Notice and the tenant application to dispute the Notice filed outside ten days has been dismissed.

I find the Notice complied with section 52 in terms of form and content.

I accept the landlord's credible and well-organized evidence in all respects. I find the landlord has established the first grounds of the Notice, that is, that the tenant has

engaged in the unlawful feeding of wildlife contrary to a municipal bylaw. I find the landlord has given written warnings to the tenant three times to no avail. I find the tenant has engaged in illegal activity that has damaged the landlord's property, adversely affected the quiet enjoyment of other occupants, and jeopardized a lawful right or interest of the landlord. As a result of my finding, I will not consider the second ground for the issuance of the Notice.

The tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must move out of the unit.

As this has not occurred, I find that the landlord is entitled to a two-day Order of Possession, pursuant to section 55 of the Act. The landlord testified the tenant will be requested to vacate upon two days notice.

As the landlord has been successful in this application, I grant the landlord an award for reimbursement of the filing fee of \$100.00 which may be deducted from the security deposit held by the landlord.

### Conclusion

I grant the landlord an award for reimbursement of the filing fee of \$100.00 which may be deducted from the security deposit held by the landlord.

I grant an Order of Possession to the landlord effective two days after service on the tenant. This Order must be served on the tenant. The Order may be filed in the Courts of the Province of BC and enforced as an Order of that Court.

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: November 25, 2021

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Residential Tenancy Branch