



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

Dispute Codes      OPC

### Introduction

The Application for Dispute Resolution (the Application) was filed by the Landlord under the Residential Tenancy Act (the Act), on July 28, 2022, seeking:

- an Order of Possession for cause.

The hearing was convened by telephone conference call at 9:30 AM on September 13, 2022, and was attended by two Agents for the Landlord (the Agents), both of whom provided affirmed testimony. No one attended on behalf of the Tenant. The Agents were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Agents were advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The Agents were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The Agents were also advised that personal recordings of the proceeding were prohibited under the Rules of Procedure and confirmed that they were not recording the proceedings.

The Rules of Procedure state that the respondent must be served with a copy of the Application, the Notice of Hearing, and any documentary evidence intended to be relied upon at the hearing by the applicant(s). As the Tenant did not attend the hearing, I confirmed service of these documents as explained below.

The Agents testified in the hearing that the Notice of Dispute Resolution Proceeding Package (NODRP), which includes the Application and the Notice of Hearing, along with the documentary evidence before me from the Landlord, was sent to the Tenant by

registered mail on August 18, 2022. The Agents provided a copy of the registered mail receipt and the registered mail address sticker with the tracking number affixed. I note that the address shown on the sticker matches the Tenant's address shown in the tenancy agreement before me. The Agents stated that Canada Post tracking shows that the registered mail was sent on August 18, 2022, and delivered on August 19, 2022. As a result, I find that the Tenant was served on August 19, 2022, pursuant to sections 88(c) and 89(1)(c) of the Act.

Residential Tenancy Branch (Branch) records indicate that the NODRP was sent to the Landlord by email, as per their request, on August 15, 2022. As I am satisfied that the NODRP was mailed to the Tenant on August 18, 2022, I therefore find that the Landlord complied with sections 59(3) and 60 of the Act and rule 3.1 of the Rules of Procedure.

I confirmed that the hearing details shown in the NODRP were correct and I note that the Agents had no difficulty attending the hearing on time using this information. Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. Rule 7.3 of the Rules of Procedure states that 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. Based on the above and as there was no evidence before me that the parties had agreed to reschedule or adjourn the matter, I commenced the hearing as scheduled, despite the absence of the Tenant or an agent acting on their behalf.

I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the Agents, a copy of the decision and any orders issued in favor of the Landlord will be sent to them by email at the email address listed in the Application and confirmed at the hearing.

#### Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession pursuant to sections 47 and 55 of the Act?

### Background and Evidence

The tenancy agreement in the documentary evidence before me indicates that the periodic (month-to-month) tenancy began on August 1, 2019.

The Agents testified that a One Month Notice to End Tenancy for Cause (the One Month Notice) was served on the Tenant by posting it to the door of the rental unit on May 3, 2022. A photograph of an envelope posted to the door of the rental unit was submitted for my review and consideration along with a proof of service document indicating that the One Month Notice was attached to the door of the rental unit at 4:00 PM on May 3, 2022, in the presence of a witness.

The One Month Notice in the documentary evidence before me, dated May 3, 2022, has an effective vacancy date of June 30, 2022, and indicates that the reason for ending the tenancy is because the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord. In the details of events section of the One Month Notice significant details were provided by the Landlord regarding the reasons for issuance of the notice.

At the hearing, the Agents stated that the Tenant did not dispute the One Month and sought an Order of Possession for the rental unit at the end of September 2022, as rent has already been paid in full for this month.

Although the teleconference remained open for the 19-minute duration of the hearing, no one attended on behalf of the Tenant to provide any evidence or testimony for consideration.

### Analysis

Section 47 of the Act outlines the grounds on which to issue a notice to end tenancy for cause. Specifically, section 47(1)(d)(iii) states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

Section 47(4) of the Act states that 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. Section 47(5) of the Act also states that 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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

I have reviewed all relevant documentary evidence and oral testimony and in accordance with sections 88 and 90 of the Act, I find that the Tenant was deemed served with the One Month Notice on May 6, 2022, three days after I am satisfied that it was posted to the door of the rental unit.

Section 55(2) of the Act states that a landlord may request an order of possession of a rental unit if 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.

Based on the affirmed testimony of the Agents and as there is no evidence before me to the contrary, I find that the Tenant did not dispute the One Month Notice within the 10-day period provided for under the Act. Based on the foregoing, I find that the Tenant is conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on the effective date of the One Month Notice, June 30, 2022. As a result, and as I find that the One Month Notice complies with the form and content requirements set out under section 52 of the Act, I therefore find that the Landlord is entitled to an Order of Possession pursuant to section 55(2)(b) of the Act.

Section 55(3) of the Act states that the director may grant an Order of Possession before or after the date when the tenant is required to vacate a rental unit and that the order takes effect on that date. As the effective date of the One Month notice has passed, the Tenant has paid rent for the month of September 2022, and as per the agreement of the Agents at the hearing, the Order of Possession will be effective at 1:00 P.M. on September 30, 2022.

### Conclusion

Pursuant to section 55(2)(b) of the Act, I grant an Order of Possession to the Landlord effective at **1:00 P.M. on September 30, 2022, after service of this Order** on the Tenant. 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 Supreme Court of British Columbia 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 Section 9.1(1) of the Residential Tenancy Act.

Dated: September 13, 2022

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Residential Tenancy Branch