



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPC

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for an Order of Possession for cause, pursuant to sections 47 and 55.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant's interpreter also attended the hearing and affirmed to translate to the best of their ability.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Per section 95(3) of the *Act*, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

Both parties confirmed their email addresses for service of this Decision and Order.

Both parties agree that the landlord personally served the tenant with the landlord's application for dispute resolution sometime at the end of May 2022; however, neither party could recall the exact date. I find that the tenant was served with the landlord's application for dispute resolution in accordance with section 89 of the *Act*.

The landlord testified that a copy of the One Month Notice to End Tenancy for Cause (the "Notice") was included in the above package. The tenant testified that she did not

know if the Notice was included in the above package, but it probably was. I find the landlord's testimony regarding the evidence served on the tenant to be more convincing than the tenant's which was very uncertain. I accept the landlord's testimony that a copy of the Notice was included in the May 2022 service. I find that the tenant was served with the landlord's evidence in accordance with section 88 of the *Act*.

Both parties agree that the tenant's evidence was personally served on the landlord, but neither could recall on what date. I find that the landlord was served with the tenant's evidence in accordance with section 88 of the *Act*.

### Issue to be Decided

1. Is the landlord entitled to an Order of Possession for cause, pursuant to sections 47 and 55?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began at the beginning of 2022 and the tenant is currently residing in the subject rental property. Monthly rent in the amount of \$500.00 is payable on the first day of each month.

Both parties agree that the landlord personally served the tenant with a One Month Notice to End Tenancy for Cause on April 1, 2022. The tenant did not file an application for dispute resolution seeking to cancel the Notice.

The Notice was entered into evidence, is signed by the landlord, is dated April 1, 2022, gives the address of the rental unit, states that the effective date of the notice is May 1, 2022, is in the approved form, #RTB-33, and states the following ground for ending the tenancy:

Rental unit/site must be vacated to comply with a government order.

The Details of Cause section of the Notice states:

Accessory building used as dwelling unit, contrary to permit use, which is carport and workshop

The landlord testified that he served the Notice on the tenant because he was ordered to by a bylaw officer because the workshop is not a lawful area to have a tenant. The above testimony of the landlord was not disputed by the tenant.

The tenant testified that she hasn't moved out yet because she has not been able to find a place she can afford. The tenant entered into evidence emails showing her search for new accommodation.

### Analysis

Based on the testimony of both parties, I find that the tenant was personally served with the Notice on April 1, 2022, in accordance with section 88 of the *Act*.

Upon review of the Notice, I find that it meets the form and content requirements of section 52 of the *Act* because it:

- is signed and dated by the landlord,
- gives the address of the subject rental property,
- states the effective date of the Notice,
- states the ground for ending the tenancy, and
- is in the approved form, RTB Form #33.

Section 53(2) of the *Act* states that if the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section. The earliest date permitted under section 47(2) is May 31, 2022. I find that the corrected effective date of the Notice is May 31, 2022.

Based on the landlord's undisputed testimony, I find that the landlord was ordered by the subject rental city's municipal government to cease renting out the workshop as living accommodation. I therefore uphold the Notice as the landlord was permitted to end the tenancy pursuant to section 47(1)(k) of the *Act*.

Section 47(4) and section 47(5) of the *Act* state that if a tenant who has received a One Month Notice to End Tenancy for Cause does not make an application for dispute resolution within 10 days after the date the tenant receives the notice, 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.

Section 55(2)(b) of the *Act* states:

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.

The tenant did not dispute the Notice within 10 days of receiving it. I find that, pursuant to section 47(5) of the *Act*, the tenant is conclusively presumed to have accepted that the tenancy ended on the corrected effective date of the Notice, that being May 31, 2022. Pursuant to section 55(2)(b) of the *Act*, the landlord is entitled to a two-day Order of Possession.

### Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service 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.

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 27, 2022

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Residential Tenancy Branch