



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **OPC**

### Introduction

This hearing was convened as a result of the Landlord's application for dispute resolution ("Application") under the *Residential Tenancy Act* ("Act") for an Order of Possession based on a One Month Notice to End Tenancy for Cause dated September 30, 2022 ("1 Month Notice") pursuant to section 47 of the Act.

The Landlord's agent ("DS") appeared at the participatory hearing. The Tenant did not attend the hearing even though I left the teleconference hearing connection for the entire duration of the hearing scheduled for 9:30 am. I confirmed the correct call-in numbers and participant codes were provided in the Notice of Dispute Proceeding Hearing ("NDRP") generated when the Landlord applied. I also confirmed throughout the duration of the hearing that the Tenant was not in attendance and that DS and I were the only ones on the conference call. DS was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

DS stated the NDRP was served on the Tenant's door on October 29, 2022. Based on the undisputed testimony of DS, I find the NDRP was served on the Tenant in accordance with the provisions of section 89 of the Act. Pursuant to section 90, I find the NDRP was deemed to have been received by the Tenant on November 1, 2022.

DS stated the Landlord's evidence was served on the Tenant's door, together with another copy of the NDRP, on November 10, 2022. Based on the undisputed testimony of DS, I find the Landlord's evidence was served on the Tenant in accordance with the provisions of section 88 of the Act. Pursuant to section 90, I find the Landlord's evidence was deemed to have been received by the Tenant on November 1, 2022.

Issue to be Decided

Is the Landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

DS submitted into evidence a copy of the tenancy agreement dated June 1, 2021. DS confirmed the tenancy commenced on May 1, 2021, on a month-to-month basis, with rent of \$375.00 payable on the 1<sup>st</sup> day of each month. The Tenant was to pay a security deposit of \$187.50 by June 1, 2021. DS stated the Tenant paid the deposit and that the Landlord is holding the deposit in trust for the Tenant.

DS stated the 1 Month Notice was served on the Tenant's door on September 30, 2022. DS submitted into evidence a copy of a signed and witnessed Proof of Service on Form RTB-34 to corroborate his testimony that the 1 Month Notice was served on the Tenant's door on September 30, 2022. The 1 Month Notice stated the causes for ending the tenancy were:

- 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
  - put the landlord's property at significant risk
- Tenant or a person permitted on the property by the tenancy has caused extraordinary damage to the unit/site or property/park
- Tenant has not done required repairs of damage to the unit/site/property/park
- Non-Compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order

The details of the causes stated in the 1 Month Notice were:

One June 23, 2022 the [Name of City] Property Use Inspector issued the occupant a "Notice to Clean Up Your Room". This "Clean Up" was to meet the Standards of Maintenance prescribed in subsections [subsections of municipal bylaw stated]. The occupant was given until July 22, 2022 to complete this clean up. On Sept 14, 2022 another Tenant came to the [Name of Building] Manager's office and complained that the hall outside [Room Number of Rental Unit] was blocked with bike parts and other debris. Upon investigations the hall was blocked with all manner of items. The door of Unit 214 was open and I took photos of the rooms condition. The Occupant had not complied with the City Inspector's Order. Some time after September 14<sup>th</sup> the Occupant was seen drilling out the Deadbolt Lock on the door of [Room Number of Rental Unit]. When asked why he said he had lost his key and couldn't ask the Manager to open it with the Master Key as the Occupant had changed the lock and the Manager did not have a key for this lock.

DS stated the City Property Inspector performs an inspection once a year. DS stated that, in the course of the inspection, the inspector found the rental unit was cluttered and unsafe and there was no access. DS submitted into evidence a copy of a Notice dated June 23, 2022 ("Notice") from the Permits and Licenses Department of the City in which the rental unit is located. The Notice stated in part:

Occupier of this unit shall maintain property in a neat and tidy condition to provide clear access for emergency response.

DS submitted into evidence three photos showing the interior of the rental unit was completely cluttered with items and two photos that showed items in the hallway outside the door to the rental unit. DS submitted into evidence a copy of the relevant bylaws of the City. The Notice required the Tenant to clean up his room by July 22, 2022. at which time the rental unit would be reinspected. DS stated the Notice was served on the Tenant's door on June 23, 2023 and a copy was placed in the Tenant's mailbox. DS stated the municipal Fire Department also made a verbal request that the Tenant clean up his room as it was a hazard to the building and the other occupants of the building. DS stated the Tenant chose to ignore the Notice and said he was keeping the rental unit the way it was. DS stated the staff of the residential property met with resistance from the Tenant to do anything about cleaning up his room in accordance with the Notice. DS stated the Landlord offered the Tenant opportunities for counselling but the Tenant refused these offers for assistance.

DS stated the Tenant changed the lock to the rental unit sometime in early September 2022. DS stated staff of the residential property noticed the deadbolt on the door to the rental unit was drilled out. DS stated that, when the Tenant was asked why had had drilled out the deadbolt, he said he changed the lock to the door, lost the key and, as a result, he could not ask the manager to open the door because the master key had been changed by the Tenant.

### Analysis

Subsection (1)(d)(ii) and sections 47(2), 47(3), 47(4) and 47(5) of the Act state:

- 47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

[...]

- (d) the tenant or a person permitted on the residential property by the tenant has

[...]

- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or  
(iii) put the landlord's property at significant risk;

[...]

- (f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;

- (g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) *[obligations to repair and maintain]*, within a reasonable time;

[...]

- (k) the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;

[...]

- (2) A notice under this section must end the tenancy effective on a date that is

- (a) not earlier than one month after the date the notice is received,  
and

- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.
- (3) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.
- (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.

The 1 Month Notice was served on the Tenant by registered mail on September 30, 2022. I find that, pursuant to section 90 of the Act, the Tenant was deemed to have received the 1 Month Notice on October 3, 2022. Pursuant to section 47(4) of the Act, the Tenant had until October 8, 2022 to make an application to dispute the 1 Month Notice. There is no evidence that the Tenant made an application to dispute the 1 Month Notice. As a result, section 47(5) provides the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the 1 Month Notice, being November 1, 2022. Based on the foregoing, I find the Landlord is entitled to an Order of Possession pursuant to section 55(4)(a) of the Act. Notwithstanding the Tenant is conclusively presumed to have accepted the tenancy has ended, I will nevertheless consider whether there was cause to end the tenancy pursuant to the 1 Month Notice.

The Notice was served on the Tenant because the Tenant failed to maintain the rental unit in neat and tidy condition and to provide clear access for emergency response. DS stated the municipal Fire Department also made a verbal request that the Tenant clean up his room as it was a hazard to the building and the other occupants of the building. The Tenant refused or neglected to comply with the Notice. The Tenant refused the Landlord's offers for counselling. DS stated the Tenant changed the lock to the rental unit sometime in early September 2022. DS stated staff of the residential property noticed the deadbolt on the door to the rental unit was drilled out. DS stated that, when the Tenant was asked why had had drilled out the deadbolt, he said he changed the lock to the door, lost the key and, as a result, he could not ask the manager to open the door because the master key had been changed by the Tenant.

Section 32(2) of the Act states:

- 32(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

I find the Notice was not an order of a federal, provincial or municipal government authority. As such, it is not cause to end the tenancy pursuant to section 47(1)(k) of the Act. However, the Notice requested the Tenant clean up his room in accordance with requirements of municipals bylaws by July 22, 2022. Based on the testimony and evidence of DS, I also find the rental unit did not comply with the requirements of section 32(2) of the Act. The Tenant chose to ignore the Notice and did not comply with the request to clean his rental unit as requested in the Notice by July 22, 2022. The condition of the Tenant's rental unit jeopardized the safety of other occupants of the residential property at risk. The condition of the rental unit placed the Landlord's property at significant risk. Based on the undisputed testimony of DS, I find the Landlord has demonstrated, on a balance of probabilities, cause for ending the tenancy pursuant to subsections 47(1)(e)(ii) and 47(1)(e)(iii) of the Act. As I have found cause to end the tenancy pursuant to subsections 47(1)(e)(ii) and 47(1)(e)(iii) of the Act, it is unnecessary for me to consider whether any of the other causes listed in the 1 Month Notice are valid.

Sections 55(2) through 55(4) of the Act state:

- 55(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:
- (a) a notice to end the tenancy has been given by the tenant;
  - (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;*

- (c) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
  - (c.1) the tenancy agreement is a sublease agreement;
  - (d) the landlord and tenant have agreed in writing that the tenancy is ended.
- (3) The director may grant an order of possession before or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order.
- (4) *In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 [Resolving Disputes],*
- (a) *grant an order of possession, and*
  - (b) if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.

[emphasis in italics added]

I have reviewed the 1 Month Notice and find it complies with the form and content requirements of section 52 of the Act. The Tenant has paid the rent until January 31, 2023. Based on the foregoing, pursuant to section 55(4)(a) of the Act, I grant the Landlord an Order of Possession of the rental unit to the Landlord requiring the Tenant to deliver vacant possession of the rental unit by 1:00 pm on January 31, 2023, after being served with a copy of this decision and attached Order by the Landlord.

### Conclusion

The Landlord is granted an Order of Possession requiring the Tenant to vacate the rental unit by 1:00 pm on January 31, 2023, after being served with a copy of this decision and attached Order by the Landlord. This Order of Possession may be filed by the Landlord 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: January 24, 2023

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Residential Tenancy Branch