



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PACIFICA HOUSING ADVISORY  
ASSOCIATION and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC, FFL

### Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on August 8, 2022, wherein the Landlord sought an Order of Possession based on an undisputed 1 Month Notice to End Tenancy for Cause issued on June 16, 2022 (the "Notice") as well as recovery of the filing fee.

The hearing of the Landlord's Application was scheduled for 11:00 a.m. on January 6, 2023. Only the Landlord's Representatives, J.G. and M.G., as well as a witness for the Landlord, J.B. called into the hearing. The Tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:14 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord's Representatives and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlord's hearing package. J.G. testified that they served the Tenant with the Notice of Hearing and the Application on August 24, 2022 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

*Residential Tenancy Policy Guideline 12—Service Provisions* provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of August 29, 2022 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the Landlord's Representatives and relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Should the Landlord recover the filing fee?

### Background and Evidence

The tenancy began May 18, 2022. The Tenant paid \$1,065 in rent and a \$532.50 security deposit.

The Notice was issued on June 16, 2022. J.G. testified that he served the Notice by posting it to the rental unit door on June 16, 2022. This was witnessed by L.H. who confirmed service on a filed Proof of Service. Section 90 of the *Act* provides that documents served in this way are deemed served three days later such that the Tenant is deemed served as of June 19, 2022.

The Notice informed the Tenant that they had ten days from the date of service to dispute the Notice by filing an Application for Dispute Resolution. J.G. testified that the Tenant did not apply for dispute resolution.

J.G. gave testimony as to the reasons giving rise to the Notice as follows. He stated that every week the Landlord would receive complaints from numerous other residents regarding the Tenant and his guests, banging, slamming doors, yelling and shouting in the early hours of the morning (3:00 a.m. and 5:00 a.m.) as well as loud music being played regularly and disturbing others.

The Tenant was warned that his tenancy was in jeopardy on three separate occasions, copies of those warning letters were provided in evidence before me. J.G. testified that these notices were posted to the rental unit door. Despite these warnings the Tenant did not correct his behaviour.

J.G. stated that the resident support worker was also available to the Tenant to help him preserve his tenancy. However, the Tenant was belligerent to those offers and when they would interact the Tenant was aggressive towards the Landlord's staff.

### Analysis

A Landlord may end a tenancy provided they do so in accordance with the *Residential Tenancy Act*. Section 47 of the *Act* allows a Landlord to end a tenancy for cause and reads as follows:

#### **Landlord's notice: cause**

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

- (a)the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;
- (b)the tenant is repeatedly late paying rent;
- (c)there are an unreasonable number of occupants in a rental unit;
- (d)the tenant or a person permitted on the residential property by the tenant has
  - (i)significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
  - (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;
- (e)the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
  - (i)has caused or is likely to cause damage to the landlord's property,
  - (ii)has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

(iii)has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

(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;

(h)the tenant

(i)has failed to comply with a material term, and

(ii)has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

(i)the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 *[assignment and subletting]*;

(j)the tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property;

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

(l)the tenant has not complied with an order of the director within 30 days of the later of the following dates:

(i)the date the tenant receives the order;

(ii)the date specified in the order for the tenant to comply with the order.

(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.

Based on the documentary evidence, the undisputed testimony of the Landlord's Representative, and on the balance of probabilities, I find the following.

I find the Tenant was served with the Notice on June 19, 2022, 3 days after it was posted to the rental unit door. The Tenant did not apply to dispute the Notice and is conclusively presumed, pursuant to section 47(5) of the *Act* to accept the end of the tenancy and must vacate the rental unit.

I am also satisfied, based on the Landlord's Representatives testimony, as well as the evidence filed, that the Landlord has cause to end this tenancy. I find the Tenant has significantly interfered with and unreasonably disturbed other occupants of the rental building as well as the Landlord by banging and slamming doors, yelling and shouting in the early hours of the morning as well as playing music at a volume which unreasonably disturbs others. I accept the Landlord's evidence that the Tenant was repeatedly warned that his tenancy was in jeopardy yet he did not correct his behaviour. For these reasons I find the Landlord has also established cause to end this tenancy.

I have reviewed the Notice and confirm it complies with section 52 of the *Act*. I therefore grant the Landlord an Order of Possession effective **two days** after service upon the Tenant. This Order must be served on the Tenant and may be enforced in the Supreme Court of British Columbia.

As the Landlord's application had merit, I also grant the Landlord the recovery of the \$100.00 filing fee. I authorize the Landlord to retain \$100.00 of the Tenant's security deposit pursuant to section 72 of the *Act*.

### Conclusion

The Landlord is entitled to an Order of Possession. The Landlord may retain \$100.00 of the Tenant's security deposit as recovery of the filing fee.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 31, 2023

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Residential Tenancy Branch