



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding OKANAGAN COMMEMORATIVE PIONEER CULTURAL  
SOCIETY and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, FFT, OPC

### Introduction and Preliminary Matters

This hearing dealt with cross applications filed by the parties. On May 15, 2023, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On May 24, 2023, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession based on the Notice pursuant to Section 47 of the *Act*.

This hearing was scheduled to commence via teleconference at 9:30 AM on September 7, 2023.

T.A. attended the hearing as an agent for the Landlord, and he advised of the correct name of the Landlord. As such, the Style of Cause on the first page of this Decision has been amended accordingly. The Tenant did not make an appearance at any point during the 16-minute teleconference. At the outset of the hearing, I informed T.A. that recording of the hearing was prohibited and he was reminded to refrain from doing so. As well, he provided a solemn affirmation.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a Decision or dismiss the Application, with or without leave to re-apply.

I dialed into the teleconference at 9:30 AM and monitored the teleconference until 9:46 AM. Only the Landlord’s agent dialed into the teleconference during this time. I

confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I confirmed during the hearing that the Tenant did not dial in, and I also confirmed from the teleconference system that the only other person who had called into this teleconference was the Landlord's agent.

T.A. advised that the Landlord was never served with the Tenant's Notice of Hearing package, in accordance with Rule 3.1 of the Rules of Procedure (the "Rules"). In addition, as the Tenant did not attend the hearing, for both these reasons, her Application has been dismissed in its entirety.

He then advised that the Landlord's Notice of Hearing and evidence package was served to the Tenant by hand on May 29, 2023, and he referenced the signed proof of service form, from the witness, that was submitted. Based on this undisputed evidence, I am satisfied that the Tenant was duly served the Landlord's Notice of Hearing and evidence package. Furthermore, as the Landlord's evidence was served in accordance with the timeframe requirements of Rule 3.15 of the Rules, I have accepted this evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that is compliant with the *Act*.

#### Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?

### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

T.A. advised that the tenancy started on March 15, 2015, that the rent was currently established at a subsidized amount of \$514.00 per month, and that it was due on the first day of each month. A security deposit of \$293.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

He then testified that the Notice was served to the Tenant by being posted to the Tenant's door, and by being placed in her mailbox on May 1, 2023. The reason the Landlord served the Notice is because of a "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 indicated that the effective end date of the tenancy was May 31, 2023. However, it should be noted that this incorrect effective date would automatically self-correct to June 30, 2023, pursuant to Section 53 of the *Act*.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

In considering this matter, I have reviewed the Landlord's Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52 and I find that it is a valid Notice.

I find it important to note that Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part 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:*

*(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;*

In addition, I note that Section 55 of the *Act* states the following:

***Order of possession for the landlord***

**55** *(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*

*(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*

*(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

Given that the Tenant's Application to dispute the Notice was dismissed because she did not serve the Notice of Hearing package and did not attend the hearing, as the Notice is valid, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 47 and 55 of the *Act*. As such, an Order of Possession is granted that takes effect **two days** after service on the Tenant.

As the Tenant was not successful in this Application, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

The Tenant's Application is dismissed without leave to reapply.

The Landlord is provided with a formal copy of an Order of Possession effective **two days** after service on the Tenant. Should the Tenant or any occupant on the premises 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 7, 2023

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Residential Tenancy Branch