



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding VANCOUVER NATIVE HOUSING  
SOCIETY and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      FFL, OPC

### Introduction

This hearing was convened by way of conference call. The Landlord filed an Application for Dispute Resolution on September 18, 2019 (the “Application”). The Landlord applied for an Order of Possession based on a One Month Notice to End Tenancy for Cause dated July 08, 2019 (the “Notice”). The Landlord also sought reimbursement for the filing fee.

K.J., I.O. and J.P. (the “Agents”) appeared at the hearing for the Landlord. The Agents appeared with a witness who was outside of the room until required. The Tenant appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenant did not. I addressed service of the hearing package and Landlord’s evidence and the Tenant confirmed receipt of these.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the relevant documentary evidence and oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

### Issues to be Decided

1. Is the Landlord entitled to an Order of Possession based on the Notice?
2. Is the Landlord entitled to reimbursement for the filing fee?

### Background and Evidence

A written tenancy agreement was submitted as evidence. The tenancy started January 01, 2017 and was for a fixed term ending May 31, 2017. Rent was \$1,279.00 per month due by the first day of each month.

K.J. testified that the tenancy became a month-to-month tenancy after May 31, 2017. The Tenant disputed this. However, the Tenant agreed no new tenancy agreement was signed and agreed he did not vacate the rental unit May 31, 2017. I advised the Tenant that, in my view, the tenancy became a month-to-month tenancy. I also advised the parties that this issue will not affect the decision and therefore I did not go into it further.

The Notice was submitted as evidence. It is addressed to the Tenant and relates to the rental unit. It is signed and dated by K.J. It has an effective date of August 31, 2019. The grounds for the Notice are that the:

1. Tenant or a person permitted on the property by the tenant has:
  - a. Significantly interfered with or unreasonably disturbed another occupant or the landlord; and
  - b. Put the landlord's property at significant risk.

The Tenant did not raise an issue with the form or content of the Notice when asked.

The Landlord submitted a Proof of Service showing I.O. posted the Notice to the door of the rental unit July 09, 2019. The Proof of Service is signed by J.P. as a witness. Both I.O. and J.P. confirmed the details of service during the hearing.

The Tenant testified that he does not know when he received the Notice. The Tenant acknowledged receiving the Notice in July and agreed it was posted to the door of the rental unit.

The Tenant testified that he did not dispute the Notice. He testified that he was ready to move out at the end of August but then found out social services had paid the Landlord rent for September and so stayed.

I advised the parties that I did not need to hear on the grounds for the Notice. K.J. confirmed the Landlord did not need to call the witness.

The Tenant testified that the Landlord has been collecting rent since the Notice was issued. K.J. testified that the Tenant is not issued rent receipts because rent is paid by electronic funds transfer from the relevant government agency.

K.J. sought an Order of Possession effective two days after service on the Tenant. K.J. acknowledged that the Landlord has likely received rent for December for the Tenant. K.J. confirmed the Landlord would return rent paid for the period after the Tenant vacates.

The Tenant testified further that he has been looking for a place since August and has not been able to find one.

### Analysis

The Landlord was permitted to serve a notice to end tenancy on the Tenant pursuant to section 47(1)(d) of the *Residential Tenancy Act* (the “*Act*”) based on the grounds listed in the Notice.

Based on the Proof of Service and the testimony confirming the accuracy of the Proof of Service from I.O. and J.P., I am satisfied the Notice was posted to the door of the rental unit July 09, 2019. I also note that the Tenant agreed the Notice was posted to the door of the rental unit and acknowledged receiving it in July. Therefore, I accept that the Notice was served in accordance with section 88(g) of the *Act*. The Tenant could not recall when he received the Notice. Pursuant to section 90(c) of the *Act*, the Tenant is deemed to have received the Notice on July 12, 2019.

Upon a review of the Notice, I find it complies with section 52 of the *Act* in form and content as required by section 47(3) of the *Act*. The Tenant did not raise any issue about the form or content of the Notice.

The Tenant had 10 days from receiving the Notice on July 12, 2019 to dispute it under section 47(4) of the *Act*. The Tenant acknowledged that he did not dispute the Notice.

Therefore, pursuant to section 47(5) of the *Act*, the Tenant is conclusively presumed to have accepted that the tenancy ended August 31, 2019, the effective date of the Notice. The Tenant was required to vacate the rental unit by August 31, 2019.

I do not find it necessary to determine whether the Landlord in fact had grounds to issue the Notice as the Tenant did not dispute it and therefore the conclusive presumption set out in section 47(5) of the *Act* applies.

I note that the Tenant raised an issue about the Landlord collecting rent after the Notice was issued. The Landlord was entitled to collect rent while the Tenant continued to reside in the rental unit pursuant to section 26(1) and 57(3) of the *Act*. I do not find that the tenancy was reinstated. The Landlord applied for an Order of Possession based on the Notice September 18, 2019, 18 days after the effective date of the Notice. This shows an intention to uphold the Notice. Further, the Tenant acknowledged he has been looking for a new rental since August and therefore I do not find the Tenant believed the tenancy had been reinstated.

I find the Landlord is entitled to an Order of Possession. The Landlord sought an Order of Possession effective two days after service on the Tenant. I issue the Landlord an Order of Possession effective two days after service on the Tenant pursuant to section 55 of the *Act*.

Pursuant to section 62 of the *Act*, I order the Landlord to return rent paid for any period after the Tenant vacates the rental unit in December. I make this order given K.J. agreed to do so during the hearing.

As the Landlord was successful in this application, I award the Landlord \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*. If the Landlord holds a security deposit for the Tenant, the Landlord can keep \$100.00 of the security deposit as reimbursement for the filing fee pursuant to section 72(2) of the *Act*. If the Landlord does not hold a security deposit for the Tenant, the Landlord can enforce the Monetary Order issued with this decision pursuant to section 67 of the *Act*. The Landlord is not permitted to both keep \$100.00 of the security deposit and enforce the Monetary Order as reimbursement for the filing fee.

Conclusion

The Landlord is issued an Order of Possession effective two days after service on the Tenant. This Order must be served on the Tenant. If the Tenant does not comply with the Order, it may be filed in the Supreme Court and enforced as an order of that Court.

As the Landlord was successful in this application, I award the Landlord \$100.00 as reimbursement for the filing fee. If the Landlord holds a security deposit for the Tenant, the Landlord can keep \$100.00 of the security deposit as reimbursement for the filing fee. If the Landlord does not hold a security deposit for the Tenant, the Landlord can enforce the Monetary Order issued with this decision. The Landlord is not permitted to both keep \$100.00 of the security deposit and enforce the Monetary Order as reimbursement for the filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: November 29, 2019

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Residential Tenancy Branch