



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ROYAL MANSIONS INVESTMENTS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC OPB FF

### Introduction

This hearing dealt with a landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") to obtain an order of possession based on an undisputed 1 Month Notice to End Tenancy for Cause dated September 30, 2016 (the "1 Month Notice"), for an order of possession based on the tenant breaching an agreement with the landlord, and to recover the cost of the filing fee.

The tenant and two agents for the landlord (the "agents") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

The tenant confirmed that he did not serve the landlord with documentary evidence and also confirmed that he had received the landlord's documentary evidence and had the opportunity to review that evidence prior to the hearing. I find the tenant was sufficiently served in accordance with the *Act*.

### Issue to be Decided

- Is the landlord entitled to an order of possession for cause under the *Act*?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The parties agreed that a month to month tenancy began on September 1, 2014. The tenant paid a security deposit at the start of the tenancy in the amount of \$775.00. The tenant continues to occupy the rental unit.

The tenant did not dispute that he was personally served with the 1 Month Notice on September 30, 2016 and stated that the date of September 30, 2016 "sounded right". The agents affirmed that the tenant was personally served on September 30, 2016 with the 1 Month Notice which

lists five causes and has an effective vacancy date of October 31, 2016. The agents affirmed that the tenant did not dispute the 1 Month Notice.

The tenant claims that based on an e-mail submitted in evidence from his legal counsel asking for an additional three months, that the landlord withdrew the 1 Month Notice which the agents vehemently disputed. The agents stated that while the landlord agreed to allow the tenant to remain in the rental unit for an additional three months as long as the tenant paid for use and occupancy for each of the additional three months the tenant would have to vacate by January 31, 2017 by 1:00 p.m. which the tenant failed to do. The tenant claims the landlord withdrew the 1 Month Notice however failed to submit any supporting evidence that there was a signed mutual agreement in writing to mutually withdraw the 1 Month Notice.

The tenant confirmed that he did not dispute the 1 Month Notice. The parties did agree that money for use and occupancy was paid for February 2017 and that the earliest order of possession effective date as a result would be February 28, 2017 at 1:00 p.m. as a result.

The landlord provided copies of both pages of the 1 Month Notice, copies of e-mail correspondence, the tenancy agreement and a receipt in evidence.

### Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

**Order of possession** – There is no dispute that the tenant was personally served with the 1 Month Notice and did not dispute the 1 Month Notice. As a result, I find the tenant was served with the 1 Month Notice on September 30, 2016. The tenant did not dispute the 1 Month Notice within 10 days of receiving the 1 Month Notice. Pursuant to section 47 of the *Act*, the tenant is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, which was October 31, 2016. As a result, I find the tenancy ended on October 31, 2016.

While I find the parties mutually agreed to allow the tenant to continue to occupy and use the rental unit until January 31, 2017 as long as money was paid for use and occupancy, I disagree with the tenant's claim that the 1 Month Notice was mutually withdrawn by the parties. I find the 1 Month Notice was never withdrawn by the landlord and that agreeing to an additional three months for the tenant was simply a kind gesture by the landlord and not an agreement to withdraw the 1 Month Notice that the tenant failed to dispute and was conclusively presumed to have accepted.

Therefore, as the tenant continues to occupy the rental unit. I find that the tenant has not only breached the agreement to vacate the rental unit by January 31, 2017 proposed by email by the tenant's legal counsel, I find the landlord is entitled to an order of possession pursuant to

section 55 of the *Act*. As a result, **I grant the landlord an order of possession effective February 28, 2017 at 1:00 p.m.**

As the landlord's application was successful, **I grant** the landlord the recovery of the cost of the filing fee in the amount of **\$100.00**. Pursuant to section 72 of the *Act*, **I authorize** the landlord to retain \$100.00 from the tenant's \$775.00 security deposit in full satisfaction of the recovery of the cost of the filing fee. I find the tenant's new security deposit balance is now \$675.00 accordingly.

### Conclusion

The landlord's application is fully successful.

The landlord is granted an order of possession effective February 28, 2017 at 1:00 p.m. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

As the landlord's application was successful, the landlord has been granted the recovery of the cost of the filing fee in the amount of \$100.00. Pursuant to section 72 of the *Act*, the landlord has been authorized to retain \$100.00 from the tenant's \$775.00 security deposit in full satisfaction of the recovery of the cost of the filing fee. The tenant's new security deposit balance is \$675.00.

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: February 23, 2017

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Residential Tenancy Branch