



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## Special Instructions

### DECISION

Dispute Codes      OPR

#### Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Landlord under the Residential Tenancy Act (the “Act”), for an Order of Possession.

The hearing was convened by telephone conference call and was attended by the agent for the Landlord (the “Agent”), who provided affirmed testimony. The Tenant did not attend. The Agent was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the respondent must be served with a copy of the Application and Notice of Hearing. As the Tenant did not attend the hearing, I confirmed service of documents as explained below.

The Agent testified that the Application and Notice of Hearing were sent to the Tenant at the rental address by registered mail on July 18, 2017, and provided the registered mail receipt in the documentary evidence before me. In accordance with sections 88 and 90 of the *Act*, I find that the Tenant was deemed served with the registered mail on July 23, 2017, five days after it was mailed.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

#### Preliminary Issues

The Application filed online by the Landlord indicates that they are seeking an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”). In the hearing the Agent clarified that both a 10 Day Notice and a 1 Month Notice to End Tenancy for Cause (the “1 Month Notice”) for repeated late payment of rent were served on the Tenant. The Agent requested to amend the application seeking

an Order of Possession to include the 1 Month Notice and to exclude the 10 Day Notice, as the Tenant has now paid the outstanding rent.

The Agent testified that the Tenant has been late paying rent every month since November 2015, and was served a 1 Month Notice for the late payment of rent. The Agent also pointed me to Application in the documentary evidence which states that the Tenant has been continuously late on rent.

The Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") state under section 4.2, that the Application may be amended at the hearing in circumstances that can reasonably be anticipated. Based on the foregoing, I find that the Tenant could reasonably have anticipated that the Landlord would seek an Order Possession for the repeated late payment of rent and the Agent's request for an amendment is granted.

In the hearing I advised the Agent that I did not have before me a copy of the 1 Month Notice relating to this Application. I advised the Landlord that I would accept oral testimony with regards to the 1 Month Notice during the hearing, and that they would have until 4:00 pm on the date of the hearing, August 28, 2017, to fax a copy of the 1 Month Notice to the Residential Tenancy Branch (the "Branch") for my consideration. I advised the Agent that if the 1 Month Notice was not received at the Branch by the above noted date and time, I would render my decision without consideration of it.

At 9:29 am on August 28, 2017, I received, by fax, a copy of the 1 Month Notice and the Proof of Service Notice to End Tenancy (the "Proof of Service") from the Agent. As the 1 Month Notice and the Proof of Service were received by the Branch within the timeframe outlined above, I have considered these documents in rendering my decision.

In the hearing the Agent testified that although the street name and unit number for the Tenant's rental unit were correct, the street number was not. The Agent testified that the Tenant's street address is actually 222 and not 254. The registered mail receipt for service of the Application and Notice of Hearing, the 1 Month Notice and the Proof of Service all list 222 as the street address for the Tenant. Based on the undisputed evidence before me and on a balance of probabilities, I am satisfied that the street address for the Tenant's rental unit is 222 and not 254.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for the repeated late payment of rent pursuant to sections 47 and 55 of the *Act*?

### Background and Evidence

In the hearing the Agent testified that the 1 Month Notice for the repeated late payment of rent, dated July 18, 2017, was served on the Tenant on July 18, 2017, by attaching a copy to the door of the Tenant's rental unit in the presence of a witness. The Agent testified that the 1 Month Notice has an effective vacancy date of August 30, 2017, and submitted into the documentary evidence before me a copy of the 1 Month Notice and a witnessed Proof of Service Notice to End Tenancy (the "Proof of Service") which match the above noted oral testimony.

The Agent testified that the tenancy began as a one year fixed-term tenancy on September 1, 2015, and became a month to month tenancy thereafter. The Agent testified that the Tenant continues to reside in the rental unit and has paid rent 1-2 weeks late every month since November 2015.

### Analysis

I have reviewed all relevant affirmed and undisputed oral testimony and in accordance with sections 88 and 90 of the *Act*, I find that the Tenant was deemed served with the 1 Month Notice on July 21, 2017, 3 days after it was attached to the door of the rental unit.

Section 47(1)(b) of the *Act* states that a Landlord may end a tenancy by giving notice to end the tenancy if the Tenant is repeatedly late paying rent. Section 47(4) of the *Act* allows a tenant who receives a notice under this section of the *Act* to make an application for dispute resolution within 10 days after the date they receive the notice. Section 47(5) states if a tenant fails to dispute the notice within 10 days, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

As there is no evidence before me that the Tenant disputed the 1 Month Notice within the 10 day period, I find that the Tenant is conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 1 Month Notice, August 31, 2017.

As a result, I find that the Landlord is entitled to an Order of Possession for repeated late payment of rent pursuant to sections 47 and 55 of the *Act*.

Conclusion

Based on the above, I grant an Order of Possession to the Landlord effective **1:00 pm August 31, 2017, after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in 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: August 30, 2017

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Residential Tenancy Branch