



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPL, FF

### Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession based on a One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 9:41 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:30 a.m. The landlords' agent (the landlord) attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that the Landlords' Application for Dispute Resolution (the Application) and evidentiary package was sent to the tenant by way of registered mail on September 02, 2017. The landlord provided a copy of the Canada Post Tracking Number to confirm this registered mailing. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was deemed served with the Application and evidentiary package on September 07, 2017, the fifth day after its registered mailing.

The landlord gave undisputed sworn testimony that a One Month Notice was posted to the door of the rental unit on August 05, 2017. In accordance with sections 88 and 90 of the *Act*, I find the One Month Notice was deemed served to the tenant on August 08, 2017, three days after its posting.

At the outset of the hearing the landlord testified that the tenant is still in the rental unit.

### Issues(s) to be Decided

Are the landlords entitled to an Order of Possession based on the One Month Notice?

Are the landlords entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

The landlord gave written evidence that this tenancy began on January 14, 2013, with a monthly rent of \$375.00, due on the first day of each month. The landlord testified he continues to retain a security deposit of \$175.00 in trust.

A copy of the signed One Month Notice, dated August 05, 2017, with an effective date of September 30, 2017, was included in the landlord's evidence. The landlord cited the following reasons for the issuance of the One Month Notice:

*Tenant or a person permitted on the property by the tenant has:*

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
- *put the landlord's property at significant risk.*

### Analysis

Section 47 of the *Act* establishes that a landlord may issue a One Month Notice to end a tenancy when the landlord has cause to do so.

Section 47(4) and (5) of the *Act* stipulates that a tenant who has received a notice under this section, who does not make an application for dispute resolution within 10 Days after the date the tenant receives the notice, is 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.

Based on the landlords' undisputed evidence and sworn testimony, I find the tenant did not make an application pursuant to section 47(4) of the *Act* within 10 days of receiving the One Month Notice. In accordance with section 47(5) of the *Act*, the failure of the tenant to take this action within 10 days led to the end of this tenancy on September 30, 2017, the effective date on the One Month Notice. In this case, the tenant and anyone on the premises were required to vacate the premises by September 30, 2017. As this

has not occurred, I find that the landlords are entitled to a two (2) day Order of Possession.

Therefore, as the landlords have been successful in this application, I allow them to recover the filing fee from the tenant.

Although the landlords' application does not seek to retain the tenant's security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlords to retain \$100.00 of the tenant's security deposit in satisfaction of the monetary award.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) or anyone 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.

Pursuant to section 72 of the *Act*, I allow the landlords to retain \$100.00 for the filing fee from the existing security deposit, which is now reduced to \$75.00.

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: October 11, 2017

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Residential Tenancy Branch