



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** OPC FFL CNC OLC FF

### **Introduction**

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession for cause pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenant requested:

- cancellation of the landlord’s 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

While the landlord’s agent, BB (“landlord”), attended the hearing by way of conference call, the tenant did not. The landlord’s agent was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that the tenant was served with the landlord’s application for dispute resolution hearing package on May 3, 2018 by way of registered mail. The landlord provided a Canada Post tracking number in their evidence. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord’s application and evidence on May 8, 2018, five days after its registered mailing.

The landlord testified that he had served the 1 Month Notice to End Tenancy for Cause (‘1 Month Notice’) to the tenant by posting the notice on the door of the rental unit on March 8, 2018. The landlord included a copy of the 1 Month Notice as well as a proof of

service in their evidence. In accordance with sections 88 and 90 the *Act*, the 1 Month Notice is deemed served on March 11, 2018, three days after its posting.

Rule 7.3 of the Rules of Procedure provides as follows:

**7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

**In the absence of any evidence or submissions from the tenant, I order the tenant's entire application dismissed without liberty to reapply.**

**Issues(s) to be Decided**

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to recover the filing fee from the tenant?

**Background and Evidence**

The landlord provided undisputed testimony that this month to month tenancy began on September 1, 2016. Rent is currently \$811.00 per month, due on the 31st day of each month. The landlord collected, and still holds, a security deposit in the amount of \$390.00. The tenant is currently still residing at the rental unit.

The landlord served the tenant a 1 Month Notice on March 8, 2018, with an effective date of April 30, 2018, providing three grounds:

1. The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
2. The tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
3. The tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.

The landlord also testified that the tenant has failed to pay rent for May 2018 in the amount of \$811.00.

### **Analysis**

Section 55(1) of the *Act* reads as follows:

**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.

A copy of the 1 Month Notice was submitted by the landlord for this hearing, and I find that the landlord's 1 Month Notice complies with section 52 of the *Act*, which states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the effective date of the 1 Month Notice, April 30, 2018. I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

**Section 26** of the *Act*, in part, states as follows:

#### **Rules about payment and non-payment of rent**

**26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.

The landlord confirmed in the hearing that the May 2018 rent was due on May 31, 2018. As the tenancy agreement allowed the tenant until May 31, 2018 to pay the May 2018 rent, I find that the rent was not yet considered outstanding for the month of May 2018 at the time of the hearing. On this basis, I dismiss the landlord's application for unpaid rent with leave to reapply.

As the landlord was only partially successful in their application, I allow the landlord to recover half of the filing fee for this application.

The landlord continues to hold the tenant's security deposit of \$390.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain \$50.00 of the tenant's security deposit in satisfaction of the monetary order for the filing fee.

### **Conclusion**

I dismiss the tenant's entire application without leave to reapply. I find that the landlord's 1 Month Notice is valid and effective as of April 30, 2018.

I grant an Order of Possession to the landlord effective two **days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlord's application for a monetary order for unpaid rent is dismissed with leave to reapply.

I find that the landlord is entitled to recover half of the filing fee. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain \$50.00 of the tenant's security deposit in satisfaction of the monetary claim.

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: June 1, 2018

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Residential Tenancy Branch