



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ASSOCIATED PROPERTY MANAGEMENT (2001) LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC, FFL

### Introduction

This hearing dealt with a landlord's Application for Dispute Resolution ("application") under the *Residential Tenancy Act* ("Act") to obtain an order of possession based on an undisputed 1 Month Notice to End Tenancy for Cause dated April 19, 2018 ("1 Month Notice"), and to recover the cost of the filing fee.

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

The parties raised no concerns regarding the service of documentary evidence. As a result, I find the parties were sufficiently served under the *Act*.

### Preliminary and Procedural Matter

The parties provided their email addresses at the outset of the hearing which were confirmed by the undersigned arbitrator. The parties confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

### Issues to be Decided

- Is the landlord entitled to an order of possession based on an undisputed 1 Month Notice under the *Act*?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on December 15, 2011 and reverted to a month to month tenancy after December 31, 2012. Originally monthly rent was \$995.00 per month and was increased during the tenancy to the current monthly amount of \$1,075.00 per month and is due on the first day of each month. The tenants paid a security deposit of \$497.50 and a pet damage deposit of \$497.50 at the start of the tenancy which the landlord continues to hold.

The agent confirmed service of the 1 Month Notice by posting to the door of the tenants' rental unit on April 19, 2018 which is the same date the 1 Month Notice was dated. The tenants claim they have never seen the 1 Month Notice until receiving the landlord's application and evidence. The agent testified that after posting the 1 Month Notice on the rental unit door on April 19, 2018, a skinny male with missing teeth who is younger than both tenants removed the 1 Month Notice from the door and entered the rental unit. The tenants deny that they know this person yet did admit that the male tenant had family over for a visit. The agent stated that she had a witness JR who was with her when she posted the 1 Month Notice. The witness was called during the hearing but did not answer his phone to provide witness testimony.

The tenants provided vague testimony as to whom the male could have been that removed the 1 Month Notice from their door. The agent stated that the male was also there on May 3, 2018 when the agent attended the rental unit to do an inspection and that the male was playing video games near the kitchen. Both tenants deny that they know such a person. The tenants did not dispute the 1 Month Notice as they claim they have never received a 1 Month Notice.

The effective vacancy date listed on the 1 Month Notice was May 31, 2018 which has passed. The parties agreed that money for use and occupancy has not been paid for July 2018.

### Analysis

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

**1 Month Notice** - I find that the tenants' testimony to be conveniently vague and unbelievable. I have reached this finding by considering that the tenants deny that there was a skinny male with missing teeth at their property and later changed their testimony

to confirm that the male tenant's family was visiting. I find it unbelievable that the tenants would be unaware of a person seen in their rental unit on two occasions, once removing the notice as testified by the agent; and the second time a few weeks later on May 3, 2018 playing video games inside the rental unit near the kitchen. I note the tenants did not state that they don't have video games or had other people in the rental unit as the male tenant did state that family was visiting and at no time did the tenants state that the family does not match the description of the person described by the agent.

Based on the above, I prefer the evidence of the agent that was consistent and specific during the hearing and was able to answer my clarification questions. On the other hand, when the tenants were asked to clarify their responses, the answers were vague and non-specific. I find the tenants had difficulty with their recall and I find it more likely than not that the tenants were aware of the 1 Month Notice and either forgot to dispute it, chose not to dispute it or the person who removed it forgot to advise the tenants. In any event, I find the tenants are deemed served with the 1 Month Notice three days after it was posted on April 19, 2018 which would be April 22, 2018 pursuant to section 90 of the *Act*.

Pursuant to section 47 of the *Act*, the tenants are considered conclusively presumed to have accepted the effective vacancy date of May 31, 2018 as I find the tenants did not dispute the 1 Month Notice. Therefore, I grant the landlord an order of possession **effective two (2) days** after service on the tenants as the parties confirmed that no money has been paid for use and occupancy of the rental unit for July 2018. I find the landlord's application to be fully successful and that the 1 Month Notice was not disputed by the tenants. I find the tenancy ended on May 31, 2018.

As the landlord's claim had merit, I grant the landlord the recovery of the **\$100.00** filing fee. I authorize the landlord to retain \$100.00 from the tenants' security deposit, in full satisfaction of the recovery of the landlord's filing fee, leaving the tenants' security deposit balance in the amount of \$397.50.

### Conclusion

The landlord's application is fully successful.

The landlord has been granted an order of possession effective two (2) days after service on the tenants. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia. The tenancy ended on May 31, 2018.

The landlord has been granted the recovery of the \$100.00 filing fee and the landlord has been authorized to retain \$100.00 from the tenants' security deposit, pursuant to section 67 and 72 of the *Act* in full satisfaction of the recovery of the landlord's filing fee, leaving the tenants' security deposit balance in the amount of \$397.50.

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: July 4, 2018

---

Residential Tenancy Branch