



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPC, FFL

### Introduction

This hearing dealt with a landlord's Application for Dispute Resolution ("application") seeking remedy 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 June 29, 2018 ("1 Month Notice") and to recover the cost of the filing fee.

The landlord and a witness for the landlord CL ("witness") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlord was 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.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing ("Notice of Hearing"), application and documentary evidence were considered. The landlord testified that the Notice of Hearing, application and documentary evidence were served on the tenant by personal service at the rental unit on September 29, 2018 which was supported by witness testimony which confirmed that the witness was present and witnessed the landlord serve the tenant as claimed by the landlord on September 29, 2018 in the morning at approximately 9:00 a.m. The landlord submitted a proof of service document in evidence signed by the landlord, witness and the tenant also which supports the information above. Based on the above and without any evidence before me to prove to the contrary, I accept that the tenant was served with the Notice of Hearing, application and documentary evidence personally by the landlord on September 29, 2018.

### Preliminary and Procedural Matter

The landlord confirmed their email address at the outset of the hearing. The landlord confirmed their understanding that the decision would be emailed to the landlord along with any applicable orders. The tenant will be sent the decision by regular mail as no email address was included for the tenant in the landlord's application.

### Issues to be Decided

- Is the landlord entitled to an order of possession based on an undisputed 1 Month Notice?
- 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 month to month tenancy began on August 1, 2016. The monthly rent was \$800.00 per month at the start of the tenancy and due on the last day of the month prior. The landlord affirmed that the tenant paid a \$400.00 security deposit at the start of the tenancy which has accrued no interest to date and which the landlord continues to hold.

The landlord confirmed service of the 1 Month Notice by personal service on the tenant on June 29, 2018 at 12:17 p.m. at the rental unit address. The witness testified that she was with the landlord when the tenant was served with the 1 Month Notice on June 29, 2018. The 1 Month Notice included an effective vacancy date of July 30, 2018 and indicated one cause on page two of the 1 Month Notice. The landlord affirmed that the tenant took the 1 Month Notice when served and has not disputed the 1 Month Notice. The landlord stated that the tenant said "this is not from a real judge" when she was served and stated she will refuse to move.

The landlord submitted the tenancy agreement, 1 Month Notice, proof of service document and other documents in support of the 1 Month Notice in evidence.

The landlord confirmed that money for use and occupancy for November 2018 was accepted by the landlord. The landlord affirmed that she has not reinstated the tenancy.

### Analysis

Based on the undisputed documentary evidence and undisputed testimony provided by the landlord during the hearing, the undisputed witness testimony and on the balance of probabilities, I find the following.

**Order of possession** – Section 47 of the *Act* states that if the tenant once served with the 1 Month Notice does not dispute the 1 Month Notice within 10 days of receiving the 1 Month Notice, the tenant is conclusively presumed to have accepted the 1 Month Notice and must vacate the rental unit on the effective vacancy. In the matter before me, the tenant did not dispute the 1 Month Notice and as a result, I find the tenancy ended on the corrected effective vacancy date July 31, 2018. Section 53 of the *Act* automatically corrects effective dates of a notice to end tenancy and I find that since July has 31 days, that the tenancy ended on July 31, 2018. As the tenant continues to occupy the rental unit, I find the tenant is over-holding the rental unit. Therefore, pursuant to section 55 of the *Act*, I grant the landlord an order of possession effective **November 30, 2018 at 1:00 p.m.** as the landlord confirmed that money for use and occupancy was paid by the tenant for November 2018. I find the landlord has not reinstated the tenancy.

As the landlord's application was successful and pursuant to section 72 of the *Act*, I authorize the landlord to retain **\$100.00** from the tenant's \$400.00 security deposit in full satisfaction of the landlord's recovery of the cost of the filing fee. I find the tenant's **security deposit is now \$300.00 as a result** which the landlord continues to hold.

### Conclusion

The landlord's application is successful.

The landlord is granted an order of possession effective November 30, 2018 at 1:00 p.m. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

I find the tenancy ended on July 31, 2018 and that the tenant has been over-holding the rental unit since that date.

The landlord has been authorized to retain \$100.00 from the tenant's \$400.00 security deposit in full satisfaction of the landlord's recovery of the cost of the filing fee. The

tenant's security deposit is now \$300.00 as a result which the landlord continues to hold.

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: November 6, 2018

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Residential Tenancy Branch