



# 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 the landlord's 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 sections 47 and 55; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants 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 landlord's 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.

Rules 7.1 and 7.3 of the Residential Tenancy Branch Rules of Procedure provides as follows:

*The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.*

The landlord testified that the Application for Dispute Resolution (the Application) and evidentiary package were sent to each tenant by way of registered mail on October 11, 2018. The landlord provided copies of the Canada Post Tracking Numbers to confirm these registered mailings. In accordance with sections 88, 89 and 90 of the Act, I find that the tenants were deemed served with the Application and evidentiary packages on October 16, 2018, the fifth day after its registered mailing.

The landlord gave written evidence that a One Month Notice was posted to the tenants' door on September 18, 2018. In accordance with sections 88 and 90 of the *Act*, I find that the One Month Notice was deemed served to the tenants on September 21, 2018.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession based on the One Month Notice?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The landlord gave written evidence that this tenancy began on April 01, 2015, with a current monthly rent of \$937.00, due on the first day of each month. The landlord testified they continue to retain a security deposit in the amount of \$422.50.

A copy of the signed One Month Notice, dated September 18, 2018, with an effective date of October 31, 2018, was included in the landlord's evidence. The landlord cited the following reasons for the issuance of the One Month Notice:

*Tenant is repeatedly late paying rent.*

*Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

The landlord gave undisputed testimony and evidence that the tenants have been repeatedly late paying the rent. The landlord testified that the tenants are still in the rental unit.

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* stipulate 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 landlord's undisputed evidence and sworn testimony, I find the tenants 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*, due to the failure of the tenants to take this action within 10 days, I find that the tenants are conclusively presumed to have accepted that the tenancy ended on October 31, 2018, the effective date on the One Month Notice.

In this case, the tenants and anyone on the premises were required to vacate the premises by October 31, 2018. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession.

Therefore, as the landlord has been successful in this application, I allow them to recover the filing fee from the tenants.

#### 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 67 of the *Act*, I grant a Monetary Order in the landlord's favour in the amount of \$100.00, which allows the landlord to recover the filing fee from the tenants.

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: November 19, 2018

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Residential Tenancy Branch