



# 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 for cause pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Landlord RC (the landlord) entered into written evidence a Proof of Service document and gave undisputed sworn testimony that the landlord posted the 1 Month Notice on the tenants' door on October 10, 2018. Tenant DM (the tenant) said that neither she nor her father were staying at the rental unit for a number of reasons when the landlord posted the 1 Month Notice on her door. The tenant testified that she was afraid of the roommate she had allowed to live in the rental unit with her, her parents were both hospitalized, and she had to spend much of her time with them over this period. The tenant said that she had advised the landlord that she was not residing at the rental unit while she attempted to obtain the removal of her roommate from the premises. The tenant did not dispute the landlord's sworn testimony that he understood that the tenant was still living there on October 10, 2018 when the 1 Month Notice was posted on the door of the rental unit. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the 1 Month Notice on October 13, 2018, the third day after its posting

As the tenant confirmed that the tenants received a copy of the landlord's dispute resolution hearing package and written evidence package sent by the landlord by registered mail on November 19, 2018, I find that the tenants were duly served with this information in accordance with sections 88 and 89 of the *Act*. The tenants did not provide any written evidence for this hearing.

#### Preliminary Issue- Tenant's Request for an Adjournment

At the commencement of this hearing, the tenant testified that she had applied to cancel the 1 Month Notice the week before this hearing. Although the tenant did not yet have a hearing scheduled for that application, she provided the RTB File Number identified above. The tenant said that she provided written evidence as part of that application, and requested an adjournment of the current hearing to be combined with the as yet unscheduled hearing of her application to cancel the 1 Month Notice. The tenant said that she had missed the deadline for submitting evidence to the RTB and the landlord for the current hearing but would like the written evidence submitted as part of her own application to be considered.

#### Preliminary Issue- Analysis of Tenant's Request for an Adjournment

Rule 7.8 of the RTB's Rules of Procedure establishes how late requests for a rescheduling and adjournment of dispute resolution proceedings are handled.

### **7.8 Adjournment after the dispute resolution hearing begins**

*At any time after the dispute resolution hearing begins, the arbitrator may adjourn the dispute resolution hearing to another time.*

*A party or a party's agent may request that a hearing be adjourned.*

*The arbitrator will determine whether the circumstances warrant the adjournment of the hearing.*

In considering this request for an adjournment, I have applied the criteria established in Rule 7.9 of the Rules of Procedure, which provides guidance on the criteria that must be considered for granting an adjournment. Rule 7.9 explains, "Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment."

- *the oral or written submissions of the parties;*
- *the likelihood of the adjournment resulting in a resolution;*

- *the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;*
- *whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
- *the possible prejudice to each party.*

As noted in RTB Rule of Procedure 7.11, "when a request for adjournment is refused, reasons for refusing the request will be provided in the written decision."

At the hearing, the landlord strongly objected to the tenant's late request for an adjournment, noting that these problems had been continuing for some time. The landlord also noted that as the rental unit where the tenants reside is a subsidized unit, they cannot continue to allow the tenants to stay in a rental unit where the income of the person subletting a portion of the premises is unknown and may very well exceed the limits for a subsidized rental unit. The landlord testified that they have already had to wait for a hearing of this matter beyond the effective date of the 1 Month Notice, November 30, 2018, and have had to accept a payment from the tenants for December 2018, without reinstating this tenancy. The landlord maintained that the tenant's request for an adjournment would cause additional hardship to the landlord.

After considering the tenant's request for an adjournment and the landlord's position regarding that request, I declined to adjourn the hearing of the landlord's application. The tenant's apparent submission of an application to cancel the 1 Month Notice came at least six weeks after the deadline for submitting such an application. I also note that even after receiving the landlord's dispute resolution hearing package and written evidence, deemed received on November 24, 2018, additional time passed before the tenant submitted an application for dispute resolution.

Although it had no bearing on my decision at the time I declined the tenant's request for an adjournment, I also note that the RTB's records show that the tenant's application was received on December 12, 2018, the day before this hearing.

Applicants for dispute resolution are expected to submit copies of any written evidence upon which they intend to rely at least 14 days before the hearing to both the other party and the RTB. The tenants did not provide any written evidence within the time frames established in the RTB's Rules of Procedure. Their neglect in doing so and the unreasonable delay that would result from waiting for the tenants' recently submitted application to cancel the 1 Month Notice to be heard, led to my decision to decline the tenant's request for an adjournment of the matter properly before me. The request for

an adjournment was dismissed and I proceeded to hear evidence regarding the landlord's application.

### Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for cause based on the 1 Month Notice to End Tenancy for Cause (the 1 Month Notice)? Is the landlord entitled to recover the filing fee for this application from the tenants?

### Background and Evidence

The parties signed a one year fixed term Residential Tenancy Agreement (the Agreement) for this subsidized rental unit on July 26, 2017, for a tenancy that was intended to run from August 1, 2017 until July 31, 2018. When the initial term ended, this tenancy continued as a month-to-month tenancy. The initial monthly rent of \$1,375.00 increased to \$1,430.00 as of August 1, 2018. The landlord continues to hold a \$687.50 security deposit for this tenancy.

The landlord entered into written evidence a copy of the 1 Month Notice, requiring the tenants end this tenancy by November 30, 2018, for the following reasons:

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

*Tenant has assigned or sublet the rental unit/site without landlord's written consent.*

At the hearing, the tenant said that she was unable to file their application for dispute resolution within the required ten day period because they were not staying at the rental unit for a number of reasons when the landlord posted the 1 Month Notice on her door. The tenant testified that she was afraid of the roommate she had allowed to live in the rental unit with her, her parents were both hospitalized, and she had to spend much of her time with them over this period. The tenant said that the roommate has now vacated the rental unit and her father is once again residing in the rental unit with her.

### Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute

resolution with the Residential Tenancy Branch. Although the tenant testified that they filed an application to cancel the 1 Month Notice the week before this hearing, I find that the tenants failed to file their application for dispute resolution by October 23, 2018, and within the ten days of service granted under section 47(4) of the *Act*. Accordingly, I find that the tenant is conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 1 Month Notice, November 30, 2018.

In reaching this conclusion, I have taken into account the tenant's sworn testimony that she was not staying at the rental unit when the 1 Month Notice was posted on her door for a number of reasons. The tenant maintained that she was afraid of the roommate she had allowed to reside with her, and that both her mother and father had been hospitalized, and she was staying close to them for this period of time.

Section 47(3) of the *Act* requires that "a notice under this section must comply with section 52 [*form and content of notice to end tenancy*]. Based on the undisputed testimony of the landlord and the written proof of the posting of the 1 Month Notice, I find that the tenant was deemed served with the 1 Month Notice, and I find that the 1 Month Notice does comply with the form and content provisions of 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.

At the hearing, the landlord's representatives testified that they were willing to let the tenants remain in the rental unit until January 31, 2019, provided that they paid the required \$1,430.00 when it was due. They said that they would accept the tenants' January 2019 payment for use and occupancy only and not to reinstate this tenancy.

I allow the landlord's application and grant the landlord's request to end this tenancy on the basis of the 1 Month Notice. I issue an Order of Possession to take effect by 1:00 p.m. on January 31, 2019.

As the landlord has been successful in this application, I allow the landlord to recover the \$100.00 filing fee from the tenants.

Conclusion

The landlord is provided with a formal copy of an Order of Possession effective by 1:00 p.m. on January 31, 2019. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary Order in the landlord's favour in the amount of \$100.00, which allows the landlord to recover the filing fee for this application from the tenants. The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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: December 13, 2018

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Residential Tenancy Branch