



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ATIRA PROPERTY MANAGEMENT INC  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes          OPC FF

This hearing dealt with the Landlord's Application for Dispute Resolution, made on December 5, 2018 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for cause; and
- an order granting recovery of the filing fee.

The Landlord was represented at the hearing by M.E. and K.E., agents. The Tenant attended the hearing on his own behalf. All in attendance provided a solemn affirmation at the beginning of the hearing.

On behalf of the Landlord, K.E. testified the Application package was served on the Tenant by registered mail at the rental address on December 7, 2018. K.E. provided Canada Post tracking information in support. The Tenant denied he received the Application package. He stated he is unable to receive registered mail because he has no identification, which I do not accept. The Tenant was able to call into and participate in the telephone conference hearing. Pursuant to sections 89 and 90 of the *Act*, documents served by registered mail are deemed to be received 5 days later. Therefore, I find the Application package is deemed to have been received by the Tenant on December 12, 2018. The Tenant did not submit documentary evidence in response to the Application.

The Landlord's agents and the Tenant were provided with the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

1. Is the Landlord entitled to an order of possession for cause?
2. Is the Landlord entitled to recover the filing fee?

Background and Evidence

The Landlord submitted a copy of the tenancy agreement between the parties into evidence. It confirmed the tenancy began on January 1, 2018. Rent in the amount of \$375.00 per month is due on the first day of each month. The Tenant paid a security deposit in the amount of \$187.50, which the Landlord holds.

The Landlord wishes to end the tenancy. Accordingly, the Landlord issued a One Month Notice to End Tenancy for Cause, dated October 29, 2018 (the "One Month Notice"), a copy of which was submitted into evidence. The effective date of the One Month Notice was indicated to be December 1, 2018. According to K.E., the One Month Notice was served on the Tenant in person on October 29, 2018.

The One Month Notice was issued following an assault that occurred on the rental property. During the hearing, the Tenant admitted that he committed the assault, does not regret the assault, and would probably do it again.

In any event, the Tenant acknowledged during the hearing that he received the One Month Notice on October 29, 2018. He stated that he discussed the One Month Notice with the property manager but did not dispute it by making an application for dispute resolution.

The Landlord also sought to recover the filing fee paid to make the Application.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 47(4) of the *Act* stipulates that a tenant who receives a notice to end tenancy for cause has 10 days after receipt to dispute it by filing an application for dispute resolution. Further, section 47(5) of the *Act* confirms that failure to dispute a notice to end tenancy for cause within the required timeframe results in the conclusive presumption the tenant accepted the tenancy ended on the effective date of the notice.

In this case, I find the One Month Notice was served on and received by the Tenant on October 29, 2018. Therefore, pursuant to section 47(4) of the *Act*, the Tenant had until November 8, 2018, to dispute it by filing an application for dispute resolution. The Tenant testified that he

discussed the One Month Notice with the property manager but did not submit an application for dispute resolution. Accordingly, pursuant to section 47(5) of the *Act*, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the One Month Notice. The Tenant is over-holding. As a result, I find the Landlord is entitled to an order of possession, which will be effective two (2) days after service on the Tenant.

Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application, which I order may be retained from the security deposit held.

The above findings were explained to the Tenant several times during the hearing. Despite his interest in providing testimony regarding the assault, he was advised that it was not a consideration in reaching a decision. The Tenant disconnected from the telephone conference before the end of the hearing.

### Conclusion

The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

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: January 18, 2019

---

Residential Tenancy Branch