



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 0303823 BC Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDL-S, MNRL-S, OPC, FFL

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for:

- an order of possession for cause;
- compensation for damage caused by the Tenant, their pets or guests to the unit;
- an order to recover the money for unpaid rent, holding the security deposit; and
- to recover the cost of their filing fee.

The Tenant and an agent for the Landlord, A.W., (the "Agent") appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure (the "Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Neither party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence.

### Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the decision would be emailed to both Parties.

The Agent said she served the Application and documentary evidence on the Tenants via registered mail. In the hearing, the Tenant agreed that he had received the

Application and documentary evidence from the Landlord, and had a chance to review it. The Tenant said he did not submit any documents to the RTB.

Rule 2.3 permits me to sever claims that are not sufficiently related. I find that the most important issue in dispute is whether the tenancy will continue or not. I find that the Application for monetary orders are not sufficiently connected to the main issue to consider in this proceeding. Accordingly, I sever the monetary orders from the Application, aside from the recovery of the filing fee, and I dismiss the Landlord's Application for monetary orders with leave to reapply.

#### Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession, pursuant to section 55 of the Act?
- Is the Landlord entitled to recovery of the filing fee, pursuant to section 72 of the Act?

#### Background and Evidence

The Parties agreed that the month-to-month tenancy started on December 20, 2017, with a monthly rent of \$1,175.00, due on the first of each month. They agreed that the Tenants paid to the Landlord a security deposit of \$588.00 and no pet damage deposit.

The Agent said she served the One Month Notice to End Tenancy for Cause (the "One Month Notice"), on the Tenants by attaching both pages of it to their apartment door on January 31, 2019. The Agent submitted a photograph of the two-page document attached to an apartment door. The Tenant agreed that he received the One Month Notice on January 31, 2019. The effective vacancy date set out on the One Month Notice was February 28, 2019.

The Agent said she served the One Month Notice, because other tenants had complained about domestic disturbances in the Tenants' rental unit, including attendance by the police for the disturbances. The Agent had checked a box on the One Month Notice saying that the Tenant has "significantly interfered with or unreasonably disturbed another occupant or the landlord."

In the hearing, the Tenant said that "accusations of domestic disturbance are uncomfortable for me to hear. I have a wife who is bipolar." He said they are trying to live their lives, and that he understands that other tenants are concerned, but that this is

a health issue. The Tenant said: "There must be another way around this eviction notice. We could come to a different agreement. We don't want to invade on anybody else's life, but we feel targeted."

The Agent said that she strongly disagrees. She pointed to letters she has received from two different tenants indicating that the disturbances are escalating. The Agent stressed that it is not just one person complaining about the disturbances and that there have been repeated incidents of police attendance at the property due to the Tenants.

The Tenant did not apply to the RTB dispute the One Month Notice.

### Analysis

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

Section 47(1) of the *Act* permits a landlord to end a tenancy by giving notice to end the tenancy for cause. A notice given must comply with sections 47 (2) and (3) of the *Act*. After receiving such a notice, a tenant may dispute it by applying for dispute resolution within 10 days.

Pursuant to section 90 of the *Act*, I find that the Tenants were deemed served with the One Month Notice on February 3, 2019, three days after it was posted to their door. Section 47(2) of the *Act* states:

- (2) A notice under this section must end the tenancy effective on a date that is
  - (a) not earlier than one month after the date the notice is received, and
  - (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Based on section 47(2), I find that the effective date of the One Month Notice is defective, but that it can be corrected pursuant to section 53 of the *Act*. That section states that "if the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section." Accordingly, I find that the effective date of the One Month Notice is March 31, 2019.

Section 47(3) of the *Act* states that a notice under this section must comply with section

52 of the *Act*. This section states that to be effective, a notice to end tenancy 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.

Having reviewed the copy of the One Month Notice that was served on the Tenants, which was uploaded by the Agent, I find that the One Month Notice is consistent with requirements of section 52 and is, therefore, valid.

Section 47(5) of the *Act* states that a tenant who does not apply for dispute resolution within 10 days is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and that the tenant must vacate the rental unit by that date.

As there is no evidence before me that the Tenants disputed the One Month Notice by filing an application to dispute it, I find that they are conclusively presumed under section 47(5) of the *Act* to have accepted the One Month Notice. I find that the Landlord is entitled to an order of possession pursuant to section 55(3), of the *Act*. As the corrected effective date has not yet passed, the Order of Possession will be for March 31, 2019 at 1 p.m.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recovery of the \$100.00 filing fee, pursuant to section 72 of the *Act*. I authorize the Landlord to retain this \$100.00 from the Tenants' security deposit.

### Conclusion

Pursuant to Rule 2.3, I dismiss the Landlord's Application for compensation for damage caused by the Tenant, their pets or guests to the unit, and for an order to recover the money for unpaid rent, holding the security deposit, with leave to reapply.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **March 31, 2019, at 1 p.m.** The Landlord is provided with this Order in the above terms and the Tenants must be served with this Order as soon as possible.

Should the Tenants fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and be enforced as an Order of that Court.

Pursuant to section 72 of the *Act*, I grant the Landlord recovery of the \$100.00 filing fee from this Application. The Landlord is authorized to retain \$100.00 from the Tenant's security deposit.

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: March 19, 2019

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Residential Tenancy Branch