



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding WALL FINANCIAL CORPORATION and  
[tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

Landlord's application: OPC, FFL  
Tenant's application: CNC, OLC, PSF, LRE, FFT

### **Introduction**

This hearing dealt with an Application for Dispute Resolution ("application") by both parties seeking remedy under the *Residential Tenancy Act* ("Act"). The landlord applied to obtain an Order of Possession based on a 1 Month Notice to End Tenancy for Cause dated July 9, 2019 ("1 Month Notice") and to recover the cost of the filing fee. The tenant applied to cancel the 1 Month Notice, for an order directing the landlord to comply with the Act, regulation or tenancy agreement, for an order directing the landlord to provide services or facilities agreed upon but not provided, for an order to suspend or set limits on the landlord's right to enter the rental unit, and to recover the cost of the filing fee.

The tenant and landlord agent CR ("agent") attended the teleconference hearing. During the hearing the parties were affirmed, the hearing process was explained and the parties were given the opportunity to present documentary evidence and affirmed testimony. A summary of the testimony and documentary evidence is provided below and includes only that which is relevant to the hearing.

Both parties confirmed receiving documentary evidence from the other party and that they had the opportunity to review that evidence prior to the hearing. I find the parties were sufficiently served under the Act as a result.

### Preliminary and Procedural Matters

Rule 2.3 of the Residential Tenancy Branch (“RTB”) Rules of Procedure (“Rules”) authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated several matters of dispute on the application, the most urgent of which is the application to cancel the 1 Month Notice. I find that not all the claims on the application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the landlord’s application and the tenant’s application to cancel the 1 Month Notice and the related filing fees. I will determine whether to grant leave to reapply for the remainder of the tenant’s application later in this decision.

Pursuant to section 64(3) of the *Act*, I amend the tenant’s application to remove BR and CR as named landlords, as I find that BR and CR are agents for the corporate landlord, which was already named.

In addition to the above, the agent confirmed their email address at the outset of the hearing. The tenant confirmed that they did not use email and would prefer to receive the decision by regular mail. The parties confirmed their understanding that the decision would be emailed to the landlord and sent by regular mail to the tenant. Any applicable orders will be sent to the appropriate party for service on the other party.

### Issues to be Decided

- Should the 1 Month Notice be cancelled or upheld under the *Act*?
- If the 1 Month Notice is upheld, is the landlord entitled to an order of possession and the recovery of the cost of the filing fee under the *Act*?
- If the 1 Month Notice is cancelled, is the tenant 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 one year fixed-term tenancy began on December 6, 2006 and reverted to a month to month tenancy after December 6, 2007. The tenant paid a security deposit of \$360.00 at the start of the tenancy, which the landlord continues to hold.

The tenant wrote in their application and testified that they received the 1 Month Notice on July 9, 2019 in person. The 1 Month Notice was submitted in evidence and has an

effective vacancy date of August 31, 2019, which has passed. The parties confirmed that money has been paid by the tenant for use and occupancy for the months of September 2019 and October 2019. The landlord stated if they are entitled to an order of possession, they would accept October 31, 2019 at 1:00 p.m. accordingly.

The landlord alleges three causes on the 1 Month Notice and provided the details of the causes also.

The parties were advised that due to the tenant filing their application on July 22, 2019 and dating their application on July 22, 2019, that the tenant filed their application late and that the tenant's application was dismissed as a result, which I will address further below.

Given the above, I did not find it necessary to consider any testimony related to the three causes listed on the 1 Month Notice as the tenant failed to dispute the 1 Month Notice in accordance with section 47 of the *Act*.

### Analysis

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

**Order of possession** – As the tenant testified and wrote on their application that they received the 1 Month Notice on July 9, 2019, and based on the fact that the tenant did not file their application which was dated by the tenant on July 22, 2019 and date stamped by the RTB on July 22, 2019, which was a Friday.

I find that the tenant did not dispute the 1 Month Notice within 10 days after being served with the 1 Month Notice on July 9, 2019. The effective vacancy date of the 1 Month Notice is listed as August 31, 2019. Section 47 of the *Act* indicates that when a tenant does not dispute a 1 Month Notice, they are conclusively presumed to have accepted that the tenancy ends on the effective vacancy date. Therefore, I dismiss the tenant's application in full, without leave to reapply due to insufficient evidence, and I find the tenancy ended on August 31, 2019. I also note that the 1 Month Notice complies with section 52 of the *Act*.

Section 55 of the *Act* applies and states:

### **Order of possession for the landlord**

**55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, **the director must grant to the landlord an order of possession of the rental unit if**

(a) **the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and**

(b) **the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.**

[Emphasis added]

Based on the above, and taking into account that the landlord has accepted money from the tenant for use and occupancy for the months of September 2019 and October 2019, I grant the landlord an order of possession pursuant to section 55 of the *Act* effective **October 31, 2019 at 1:00 p.m.**

I find there is no need to consider the three causes listed on the 1 Month Notice as the tenant failed to dispute the 1 Month Notice within the 10 day timeline set out in section 47 of the *Act*. Consequently, I find that conclusive presumption applies under the *Act*.

As the tenancy has ended as of August 31, 2019, I dismissed the remainder of the tenant's application, without leave to reapply as the tenancy has ended. I do not grant the tenant the filing fee as the tenant's application has been dismissed in full, without leave to reapply.

Pursuant to section 72 of the *Act*, as the landlord's application was successful, I grant the landlord **\$100.00** for the recovery of the cost of the filing fee. I authorize the landlord to retain \$100.00 from the tenant's security deposit which I find has accrued \$11.02 in interest since the start of the tenancy for a total security deposit including interest of \$371.02, in full satisfaction of the recovery of the cost of the filing fee. As the amount of the tenant's security deposit was previously \$371.02, I find the new balance of the tenant's security deposit including interest is now \$271.02 pursuant to sections 67 and 72 of the *Act*.

Conclusion

The tenant's application is dismissed without leave to reapply.

The landlord's application is fully successful.

The tenancy ended on August 31, 2019.

The landlord is granted an order of possession effective October 31, 2019 at 1:00 p.m. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlord has been authorized to retain \$100.00 from the tenant's security deposit in full satisfaction of the recovery of the cost of the filing fee. The tenant's security deposit balance including interest is now \$271.02.

This decision will be emailed to the landlord and mailed to the tenant. The order of possession will be emailed to the landlord only for service on the tenant.

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: September 19, 2019

---

Residential Tenancy Branch