



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Capreit Limited Partnership and  
[tenant name suppressed to protect privacy]

## **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 based on the 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 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 left the teleconference hearing connection open until 9:41 a.m. in order to enable them to call into this teleconference hearing scheduled for 9:30 a.m. The landlord's representative (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. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord provided sworn testimony supported by written evidence that they sent the 1 Month Notice to the tenants by registered mail on June 29, 2020. They entered into written evidence copies of the Canada Post Tracking Number and Customer Receipt for this mailing. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with this Notice on July 4, 2020, the fifth day after their registered mailing.

The landlord provided sworn testimony supported by written evidence that they sent the dispute resolution hearing package and copies of their written evidence to the tenants by registered mail on July 17, 2020. They entered into written evidence copies of the Canada Post Tracking Number and Customer Receipt for this mailing. They said that

they had spoken with the tenant(s) following the mailing of this material, and the tenants were clearly aware of the information contained in the landlord's application. In accordance with sections 88, 89 and 90 of the *Act*, I find that the dispute resolution hearing package and written evidence were deemed served to the tenants on July 22, 2020, the fifth day after their mailing.

At the commencement of the hearing, the landlord stated that the tenants had advised that they were in the process of vacating the rental unit and would be dropping off the key to the rental unit on the day of the hearing. In case that did not occur, the landlord requested an Order of Possession based on the 1 Month Notice.

#### Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for cause based on the 1 Month Notice? Is the landlord entitled to recover the filing fee for this application from the tenant?

#### Background and Evidence

This tenancy began on May 4, 2020, when the parties signed a one year fixed term Residential Tenancy Agreement that was scheduled to end on May 31, 2021. Monthly rent is set at \$1,500.00, payable in advance on the first of each month. The landlord continues to hold the \$750.00 security deposit and \$750.00 pet damage deposit paid by the tenants when this tenancy began. The landlord testified that they have not accepted any payments from the tenants for the month of August 2020, that would allow the tenants to remain in occupancy of the rental premises after the July 31, 2020 effective date noted on the 1 Month Notice had passed.

The landlord entered into written evidence a copy of the 1 Month Notice, which cited the following reasons for the issuance of the Notice:

*Tenant or a person permitted on the property by the tenant has:*

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*

The landlord testified that the tenants had not applied to cancel the 1 Month Notice.

### 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. I find that the tenants have failed to file an application for dispute resolution within the ten days of service granted under section 47(4) of the *Act*. Accordingly, I find that the tenants are 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, July 31, 2020.

Section 55(1) of the *Act* reads as follows:

*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.*

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]*. I am satisfied that the landlord's 1 Month Notice entered into written evidence was on the proper RTB form and complied with the content requirements of section 52 of the *Act*. For these reasons, I find that the landlord is entitled to an Order of Possession to take effect within two days of the landlord's service of the Order to the tenants. The landlord will be given a formal Order of Possession which must be served on the tenant(s).

As the landlord has been successful in their application, I allow them to recover their \$100.00 filing fee from the tenants. Although the landlord's application does not seek to retain any portion of the tenants' security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain \$100.00 from the security deposit for this tenancy as a means of implementing the recovery of the landlord's filing fee.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). 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 order the landlord to recover their \$100.00 filing fee by retaining this amount from the tenant's \$750.00 security deposit. The value of that deposit is hereby reduced to \$650.00.

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: August 20, 2020

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Residential Tenancy Branch