



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Concert Realty Services Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC, MNR-S, FF

### Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (Act) for:

- an order of possession of the rental unit pursuant to a One Month Notice to End Tenancy for Cause (Notice) served to the tenant;
- a monetary order for unpaid rent;
- authority to keep the tenant's security deposit to use against a monetary award; and
- recovery of the filing fee.

The landlord's agent (landlord) and the tenant attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The tenant did not raise an issue about receipt of the landlord's evidence and there was no documentary evidence from the tenant.

Thereafter both parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and/or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters-

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure (Rules) authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the landlord indicated two matters of dispute on the application, the most urgent of which is the application to enforce the Notice.

I find that the secondary claim on the application is not sufficiently related to the primary issue. I will, therefore, only consider the landlord's request to enforce the Notice and to recover the cost of the filing fee at this proceeding. The landlord's request for monetary compensation for alleged damage to the rental unit is dismissed, with leave to reapply.

I additionally note that the landlord failed to provide a breakdown of their monetary claim with their application and that the monetary claim in the application did not match their evidence, which was not served with their application.

Issue(s) to be Decided

Is the landlord entitled to an order of possession of the rental unit pursuant to the Notice and recovery of the filing fee?

Background and Evidence

The landlord submitted a written tenancy agreement showing a tenancy start date of May 1, 2019, a fixed term through October 31, 2019, monthly rent of \$1,275.00, due on the 1<sup>st</sup> day of the month, and a security deposit of \$637.50 being paid by the tenant to the landlord. The written tenancy agreement shows the tenancy would continue after the date of the fixed term, on a month-to-month basis.

Another tenant was listed on the written tenancy agreement. The landlord said that the other tenant vacated the rental unit on August 31, 2020.

The landlord submitted evidence that the tenant was served the Notice, dated July 13, 2020, by personal service on that date, listing an effective end of tenancy date of August 14, 2020. The tenant did not deny receiving the Notice on that date and in that manner. Filed into evidence was a copy of the Notice.

The causes listed on the Notice for ending the tenancy alleged that:

- the tenant or a person permitted on the residential property by the tenant has;
  - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, and
- the tenant breached a material term of the tenancy agreement that was not corrected within a reasonable time after the landlord gives written notice to do so.

The landlord submitted evidence that the tenant and the other tenant at the time repeatedly smoked in the rental unit and repeatedly made excessive noises, breaching the quiet enjoyment of the other tenants in the building. The landlord submitted that they have received many complaints from the other tenants and the tenant failed to comply with their repeated warnings.

*Tenant's response-*

The tenant said he had a "fail safe" option of moving and would move into the other place if he was evicted. The tenant also confirmed that he had not filed an application for dispute resolution to dispute the Notice.

Analysis

The undisputed evidence is that the tenant received the landlord's Notice on July 13, 2020, by personal service from the landlord here.

The Notice served on the tenant sets out that the tenant had ten (10) days to file an application for dispute resolution in dispute of the Notice. It also sets out that if the tenant did not file such an application within ten days, then the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit by the effective date of the Notice, in this case, August 14, 2020.

Section 47(2) provides that a One Month Notice must end the tenancy effective on a date that is not earlier than one month after the date the Notice was received and the day before the day in the month that rent is payable. In other words, the landlord must give the tenant a clear calendar month's notice.

Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act. Therefore, I find that the Notice effective date of August 14, 2020 listed on the Notice is automatically corrected to August 31, 2020.

The undisputed evidence also is that the tenant failed to make an application for dispute resolution to contest the Notice.

As such, I therefore find the tenant is conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on the now-corrected effective date of the Notice, or August 31, 2020.

I have reviewed the Notice and find it was completed in accordance with section 47 of the Act. I also find the One Month Notice was completed in the approved form and the content meets the statutory requirements under section 52 the Act.

I therefore find the landlord is entitled to an order of possession of the rental unit, pursuant to section 55(2)(b) of the Act, effective two days after service of the order upon the tenant.

The tenant must be served the Order to be effective. If the tenant fails to voluntarily comply with the order of possession, the Order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court if it becomes necessary.

The tenant is cautioned that costs of such enforcement, such as bailiff costs and filing fees, are recoverable from the tenant.

I also grant the landlord recovery of their filing fee. At the landlord's request, I authorize the landlord to deduct the amount of \$100.00 from the tenant's security deposit to recover their filing fee.

### Conclusion

The landlord's application for an order of possession of the rental unit is granted.

The landlord has been issued an order of possession of the rental unit, effective two days after service of the order upon the tenant.

The portion of the landlord's application seeking monetary compensation for damage is dismissed, with leave to reapply.

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: October 2, 2020

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Residential Tenancy Branch