



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      LL OPC FFL  
                             TT OLC CNC

### Introduction

This hearing dealt with applications from both the landlord and tenants pursuant to the *Residential Tenancy Act* (the “Act”).

The landlord applied for:

- An order of possession pursuant to section 55; and
- Authorization to recover their filing fee from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord’s 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- an order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant was assisted by a family member.

As both parties were present service was confirmed. The parties each testified that they were in receipt of the materials. Based on the testimonies I find each party served with the respective application and evidence in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

Is the landlord entitled to recover their filing fee from the tenant?

Background and Evidence

The parties agree on the following facts. This tenancy began on November 1, 2019. The monthly rent is \$725.00 payable on the first of each month. A security deposit of \$362.50 was paid at the start of the tenancy and is still held by the landlord.

The tenant testified that they were personally served with a 1 Month Notice dated July 23, 2020 on August 3, 2020. The tenant filed their application to dispute the notice on August 24, 2020.

A copy of the 1 Month Notice was submitted into evidence. The notice provides the reason for ending the tenancy as:

*Tenant has allowed an unreasonable number of occupants in the unit/site*

*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;*
- *put the landlord's property at significant risk.*

*Tenant has engaged in illegal activity that has, or is likely to:*

- *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;*

The landlord testified, giving details of the cause, saying that the tenant has allowed guests onto the property and they have disturbed other occupants by causing excessive noise at all hours and that they have engaged in hostile altercations with others. The landlord also submitted into evidence letters from other occupants complaining about the conduct of the tenant and their guests.

### Analysis

Section 47(4) of the Act provides that a tenant may dispute a 1 Month Notice within 10 days after the date the tenant receives the notice. Section 47(5) provides that if a tenant does not make an application in accordance with subsection (4) the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice.

In the present case the tenant testified that they were served with the 1 Month Notice on August 3, 2020. Therefore, they had 10 days from that date, until August 13, 2020 to file an application to dispute the notice. The tenant did not file their application for dispute resolution until August 24, 2020, outside of the 10 days provided by the *Act*. The tenant gave no reason why they did not file the application within the timeframe granted, nor have they applied for an extension of the time limit pursuant to section 66 of the *Act*.

I find that the tenant has failed to file an application for dispute resolution within the 10 days of service granted under section 47(4) of the *Act*. Accordingly, I find that the tenant is conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 1 Month Notice, September 30, 2020.

I find that the landlord's 1 Month Notice meets the form and content requirements of section 52 of the *Act* as it is in the approved form and clearly identifies the parties, the address of the rental unit, the effective date of the notice and the reasons for ending the tenancy. I accept the landlord's evidence by way of their testimony and documentary evidence that the tenant's conduct has caused significant interference and unreasonable disturbance of the other occupants of the rental property.

Therefore, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*. As the effective date of the 1 Month Notice has passed, I issue a 2 day Order of Possession.

I find little evidence in support of the tenant's application for an order that the landlord comply with the Act, regulations or tenancy agreement. The tenant did not articulate what portions of the Act or regulations the landlord has breached and their submissions

consist of complaints and accusations without sufficient evidence. I dismiss this portion of the tenant's application.

As the landlord was successful in their application they are entitled to recover the filing fee from the tenant.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain \$100.00 of the tenant's security deposit in full satisfaction of the monetary award issued in the landlord's favour. The security deposit for this tenancy is reduced by \$100.00 from \$362.50 to \$262.50.

### Conclusion

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

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenant or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The security deposit for this tenancy is reduced by \$100.00 from \$362.50 to \$262.50.

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 1, 2020

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Residential Tenancy Branch