



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC-MT  
                             OPC, FFL

### Introduction

On October 30, 2020, the Tenant filed an Application for Dispute Resolution (the Tenant's Application) under the Residential Tenancy Act (the Act), seeking cancellation of a One Month Notice to End Tenancy for Cause (the One Month Notice) and an extension to the time period set out under section 47(4) of the Act for disputing the One Month Notice. A hearing was subsequently scheduled to hear the matter on January 21, 2021, at 9:30 A.M.

On November 13, 2020, the Landlord filed an Application under the Act (the Landlord's Application) seeking an Order of Possession based on the One Month Notice and recovery of the filing fee. The Landlord's Application was considered to be a Cross-Application by the Residential Tenancy Branch (the Branch) in accordance with the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) and was therefore scheduled to be heard at the same time as the Tenant's Application, as set out above.

On January 21, 2021, the hearing of both Applications commenced before a different arbitrator. Only the Tenant attended. The arbitrator rendered a decision on January 21, 2021, granting the Tenant's Application seeking an extension to the time period set out under section 47(4) of the Act for disputing the One Month Notice, cancelling the One Month Notice, and dismissing the Landlord's Application without leave to reapply.

The Landlord subsequently filed an Application for Review Consideration on January 25, 2021, and a decision was rendered by a different arbitrator in favor of the Applicant on January 27, 2021. In that decision the arbitrator granted the Landlord's Application seeking a review hearing on the basis that they were unable to attend the

original hearing for reasons beyond their control which could not be anticipated. As a result, the arbitrator ordered that a review hearing of the original Applications take place. The arbitrator also suspended the decision and orders rendered by the original arbitrator on January 21, 2021, pending the outcome of this review hearing.

A copy of the review consideration decision and the notice of hearing for the review hearing on February 25, 2021, were made available for pick-up by the Landlord at a Service BC location on February 1, 2021, and the Landlord was advised of the availability of these documents by phone the same date. The Landlord was also advised of the requirement to serve the review consideration decision and the Notice of Hearing for the review hearing on the Tenant by February 4, 2021. A courtesy copy of the review consideration decision was also emailed to the Tenant on February 4, 2021, by the Branch at the email address provided by Tenant in their own Application.

For the sake of brevity, I will not repeat here the evidence summarized or the findings of fact made in the above noted previous decisions. As a result, the original decision dated January 21, 2021, and the review consideration decision dated January 27, 2021, should be read in conjunction with this decision.

The hearing was reconvened before me by telephone conference call at 11:00 A.M. on February 25, 2021, and was attended by the Landlord and Landlord's support person K.D., both of whom provided affirmed testimony. No one attended on behalf of the Tenant. The Landlord and their support person were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Landlord and their support person stated that the review consideration decision and the notice of hearing for the review hearing were served on the Tenant as required. They also stated that the Notice of Dispute Resolution Proceeding Package, including a copy of the documentary evidence before me from the Landlord, the Application, and the Notice of Hearing for the original hearing date, were sent to the Tenant by registered mail at the rental unit on November 20, 2020, one day after the Notice of Dispute Resolution Proceeding Package was made available to them by the Branch. The Landlord and their support person provided me with the registered mail tracking number, which has been recorded on the cover page of this decision.

Canada Post tracking information shows that the registered mail was sent on November 20, 2020, as stated by the Landlord, that notice cards were left on November 24, 2020, and November 29, 2020, and does not indicate that the registered mail was ever picked

up or delivered. Policy Guideline #12 states that where a document is served by registered mail, the refusal of the party to accept or pick up the registered mail, does not override the deeming provision and that receipt continues to be deemed to have occurred on the fifth day after mailing. Pursuant to Policy Guideline #12 and section 90(a) of the Act, I deem the above noted documents served on the Tenant on November 25, 2020.

Based on the above, the hearing therefore proceeded as scheduled despite the absence of the Tenant or anyone acting on their behalf, pursuant to rule 7.3 of the Rules of Procedure. As the Tenant did not appear at the hearing to provide any evidence or testimony in relation to service of their own Application on the Landlord, who denied receipt, or any evidence or testimony in relation to their Application seeking an extension to the time period set out under section 47(4) of the Act, I therefore dismiss the Tenant's Application, in its entirety, without leave to reapply, pursuant to rule 7.3 of the Rules of Procedure. The hearing therefore proceeded based solely on the Landlord's Application seeking an Order of Possession based on the One Month Notice and recovery of the \$100.00 filing fee.

Although I have reviewed all documentary evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure, I refer only to the relevant and determinative, facts, evidence and issues in this decision.

At the request of the Landlord, copies of the decision and any orders issued in their favor will be sent to their support person by e-mail at the e-mail address provided in the hearing.

#### Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to recovery of the \$100.00 filing fee?

#### Background and Evidence

Although the Landlord stated that a written tenancy agreement exists, they advised me at the hearing that they could not locate it and therefore it was not submitted for my review and consideration. At the hearing the Landlord provided affirmed testimony that the month to month (periodic) tenancy commenced a little over five years ago, that rent is due in advance on the 25<sup>th</sup> day of each month, and that rent in the amount of \$750.00

is currently payable. The Landlord also stated that a \$375.00 security deposit was paid by the Tenant at the start of the tenancy, which they still hold in trust.

The Landlord and their support person stated that on October 14, 2020, the One Month Notice was posted to the door of the Tenant's rental unit in the presence of a witness, and a witnessed and signed proof of service document was submitted by the Landlord in support of this testimony.

The One Month Notice in the documentary evidence before me from both the Tenant and the Landlord is on the 2020 version of the approved form, is signed and dated October 14, 2020, has an effective date of November 30, 2020, contains significant detail in the details of cause section of the form, and lists the following grounds for ending the tenancy:

- there are an unreasonable number of occupants in a rental unit;
- the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property; and
- the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property.

The Landlord stated that when the Tenant did not dispute the One Month Notice within the time period set out under section 47(4) of the Act, they filed their Application seeking an Order of Possession and recovery of the \$100.00 filing fee. The Landlord stated that as the Tenant has not paid rent in several months, they are seeking an Order of Possession as soon as possible. The Landlord also sought authorization to withhold \$100.00 from the Tenant's security deposit for recovery of the filing fee.

No one appeared at the hearing on behalf of the Tenant to provide any evidence or testimony for my consideration.

### Analysis

Based on the uncontested documentary evidence and affirmed testimony before me from the Landlord and their support person, I am satisfied that a tenancy to which the Act applies exists, the details of which are as set out in the background and evidence section of this decision, and that the One Month Notice was posted to the door of the Tenant's rental unit on October 14, 2020, in the presence of a witness.

Pursuant to section 90(c) of the Act, I therefore deem the Tenant served with the One Month Notice on October 17, 2020. Section 47(4) of the Act states that a tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice. Section 47(5) of the Act states that if a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection 4, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

Although the Tenant filed an Application with Branch seeking to dispute the One Month Notice on October 30, 2020, I find that this was more than 10 days after the date they were deemed to have received the One Month Notice, which was October 17, 2020. Further to this, although the Tenant sought an extension to the time period set out under section 47(4) of the Act, they provided no information at the original hearing on January 21, 2021, regarding the reasons for their late Application and did not appear at the review hearing on February 25, 2021, to provide me with this information.

As a result, I am not satisfied on a balance of probabilities that any exceptional circumstances existed which prevented the Tenant from filing their Application disputing the One Month Notice with the Branch on time, and I therefore find that the Tenant is not entitled to an extension of the time period for seeking a dispute of the One Month Notice set out under section 47(4), pursuant to section 66 of the Act. As a result, I find that the Tenant was required to dispute the One Month Notice by filing an Application with the Branch seeking to dispute it by October 27, 2020, which is 10 days after the date they were deemed to have received the One Month Notice, if they wished to do so. As the Tenant did not file their Application seeking to dispute the One Month Notice until October 30, 2020, and I have not granted them an extension to the time period set out in section 47(4) of the Act, I therefore find that the Tenant failed to dispute the One Month Notice within the required statutory time period.

Pursuant to section 47(5) of the Act, I therefore find that the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the One Month Notice, November 30, 2020, and was required to vacate the rental unit by that date. Further to this, I find that the Tenant has been overholding the rental unit since November 30, 2020. Based on the above, and as I am satisfied that the One Month Notice complies with section 52 of the Act, I find that the Landlord is entitled to an Order of Possession for the rental unit, pursuant to section 55(2)(b) of the Act. As the effective date of the One Month Notice has passed and the Landlord testified at the hearing that the Tenant has not paid rent in several months, I therefore grant the Landlord an Order

of Possession effective two days after service on the Tenant, pursuant to sections 55(2)(b) and 68(2) of the Act.

As the Landlord was successful in their Application, I also grant them recovery of the \$100.00 filing fee pursuant to section 72(1) of the Act. Pursuant to section 72(2)(b) of the Act, I grant the Landlord authorization to withhold \$100.00 from the \$375.00 security deposit paid by the Tenant and held in trust by the Landlord, for recovery of the filing fee. The balance of the security deposit must be dealt with in accordance with the Act.

### Conclusion

As a result of the above, I set aside the decision and orders dated January 21, 2021, and substitute them with the following decision and orders.

The Tenant's Application is dismissed in its entirety without leave to reapply.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **two (2) days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the them by the Landlord.

Pursuant to section 72 of the Act the Landlord is entitled to withhold \$100.00 from the \$375.00 security deposit paid by the Tenant and held in trust by the Landlord, for recovery of the filing fee. The balance of the security deposit must be dealt with in accordance with the Act.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: February 25, 2021

---

Residential Tenancy Branch