



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, MNDC-S, MND-S, MNR-S, FF

### Introduction

This hearing was convened to deal with the landlord's application for dispute resolution under the Residential Tenancy Act (Act), filed on December 3, 2020, 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;
- compensation for a monetary loss or other money owed;
- compensation for alleged damage to the rental unit by 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, her legal counsel (counsel), the tenant and the tenant's legal representative (representative) attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The parties confirmed receipt of the other's evidence and although some of the evidence was not submitted within the required timelines, neither party presented an issue with regard to the other's evidence.

Thereafter all parties were provided the opportunity to present their affirmed 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 Rules authorizes me to dismiss unrelated claims contained in a single application. In this circumstance, the landlord indicated several matters of dispute on the application, the most urgent of which is the application to enforce the Notice.

I find that the secondary claims on the application dealing with monetary issues are 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, unpaid monthly rent, and other monetary claim is dismissed, **with leave to reapply**.

#### 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 indicating a tenancy start date of May 1, 2020, a fixed term through December 31, 2020, monthly rent of \$2,148, due on the 1<sup>st</sup> day of the month, and a security deposit of \$1,074 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.

The landlord submitted evidence that the tenant was served the Notice, dated October 21, 2020, by registered mail, listing an effective end of tenancy date of November 30, 2020. Filed into evidence was a copy of the Notice.

The landlord's evidence showed and counsel submitted that the registered mail was sent on October 22, 2020, and served on October 23, 2020, when it was delivered. Filed into evidence was the Canada Post tracking history of the registered mail, showing a "delivered" status.

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

- 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, and
- The tenant has assigned or sublet the rental unit without the landlord's written consent.

### **Counsel's relevant submissions –**

On October 28, 2011, the landlord here entered into a tenancy agreement with the previous tenant, (CSL), who, without consent, sublet the rental unit to other tenants, including the present tenant, pursuant to a "Residential Sublease Agreement", with a term of November 30, 2019, to December 31, 2020. Filed into evidence was the sublease agreement.

CSL was operating the rental unit for commercial purposes and was subsequently evicted. Thereafter, the landlord and tenant entered into a written tenancy agreement, which listed 3 occupants on the addendum. On May 13, 2020, the tenant provided the names of the sub tenants, which included different names than on the written tenancy agreement.

The landlord has made numerous requests to the tenant throughout the tenancy, without a response, to find out the names of subsequent sub tenants, as the occupants listed on the written tenancy agreement consistently changed.

The tenant illegally sublet the rental unit, as shown by the advertisements on a named website, referring to someone with a different given name, but the same surname as the tenant. There was evidence that the rental unit at times was vacant.

The subsequent attempts to sublet were without written permission.

### ***Tenant's response-***

The tenant, through her representative, denied the tenant received the Notice by registered mail. The tenant submitted that the landlord knew her correct residential address, which was shown on her driver's licence, and failed to send the Notice or application papers to her at the proper address. The tenant further submitted that she, the landlord and an occupant have a key to the mailbox and that neither she nor her occupant received the registered mail.

The representative submitted a Supreme Court of British Columbia case, *Atchison v. British Columbia (Residential Tenancy Branch)*, 2008 BCSC 1015, to argue that the deemed served provision of section 90 of the Act is a rebuttable presumption. In that regard, there is evidence from the tenant she did not receive the registered mail containing the Notice, and she should not be deemed to have received the Notice on the 5<sup>th</sup> day.

The tenant said she did eventually receive the Notice, on November 30, 2020, the effective date of the Notice.

The tenant submitted that the landlord knew and consented to occupants being in the rental unit, as she was in the business of renting out suites to family, even prior to this tenancy beginning. The written tenancy agreement was her authority that she had written permission.

The tenant confirmed that she has not filed an application for dispute resolution to dispute the Notice. I note that the representative asserted that the tenant has now filed an application for dispute resolution, in February 2021; however, that evidence and proof of filing was not submitted. The representative said the application was in process.

### Analysis

I have reviewed the evidence and based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

The disputed evidence here is that the tenant was served the Notice by registered mail and that it was delivered on October 23, 2020. The tenant denied ever receiving the registered mail.

The tenant, however, confirmed that she did receive the Notice on November 30, 2020.

The Notice served on the tenant sets out, at the top of the first page of the Notice, that the tenant had the right to dispute the Notice within ten (10) days of receiving the Notice by filing an application for dispute resolution with the Residential Tenancy Branch (RTB). It also sets out that if the tenant did not apply within the required time limit, they were presumed to accept that the tenancy is ending and **must** move out of the rental unit by the effective date. [*My emphasis*]

In this case, I accept the tenant's evidence to the contrary of the landlord's evidence that she did not receive the Notice by registered mail; however, she confirmed receiving the Notice on November 30, 2020. For this reason, under the authority granted me in section 62 (2) of the Act, I find the corrected effective date of the Notice is December 31, 2020.

The undisputed evidence also is that the tenant failed to make an application for dispute resolution to contest the Notice by December 10, 2020, or at all. I cannot accept that the tenant filed an application sometime in February 2021, as that evidence was not before me and was still in process, according to the representative and would be well outside the time limit.

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 December 31, 2020.

Additionally, although I heard limited submissions on one of the grounds listed on the Notice, the merits of the Notice was not a requirement for me to consider at this hearing. The tenant did not dispute the merits of the Notice within the statutory time limits as stated above. Therefore, I only need to determine if the landlord has met the statutory requirements under the Act.

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 order the tenancy ended on December 31, 2020, and I find the landlord is therefore 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 fees for removal and filing fees**, are recoverable from the tenant.

I also grant the landlord recovery of their filing fee. I issue a monetary order to the landlord against the tenant in the amount of \$100. The landlord, at their option, may

deduct \$100 from the tenant's security deposit to satisfy her monetary award. If so, the monetary order is cancelled and of no force or effect.

### 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 landlord has been issued a monetary order in the amount of \$100, representing recovery of her filing fee.

The portion of the landlord's application seeking monetary compensation 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*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: March 1, 2021

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Residential Tenancy Branch