



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding A. Mion Construction  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC, MNDCL-S, FFL

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on March 31, 2021 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession based on a One Month Notice for Cause dated February 25, 2021 (the "One Month Notice");
- a monetary order for damage, compensation or loss;
- an order to retain the Tenant's security deposit; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 9:30AM on July 19, 2021 as a teleconference hearing. The Landlord and the Landlord's Agent P.R. attended the hearing at the appointed date and time. No one appeared for the Tenant. The conference call line remained open and was monitored for 15 minutes before the call ended. 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 online teleconference system that the Landlord, the Landlord's Agent, and I were the only persons who had called into this teleconference.

The Landlord testified the Application and documentary evidence package was served to the Tenant by registered mail on April 1, 2021. The Landlord submitted a registered mail receipt confirming the mailing, as well as a picture of the package which was addressed to the Tenant, and sent to the dispute address. The Landlord stated that the package was returned unclaimed. Based on the oral and written submissions of the Applicant, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenant is deemed to have been served with the Application and documentary evidence on April 6,

2021, the fifth day after the registered mailing. The Tenant did not submit any documentary evidence in response to the Application.

### Preliminary Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important issue to determine is whether or not the tenancy is ending due to a fundamental breach of the tenancy agreement or the *Act*. The Landlord's request for a monetary order for compensation, damage or loss, and an order to retain the Tenant's security deposit are dismissed with leave to reapply.

The Landlord and their Agent were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

1. Is the Landlord entitled to an order of possession based on a One Month Notice for Cause, pursuant to Section 55 of the *Act*?
2. Is the Landlord entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?

### Background and Evidence

The Landlord stated that the tenancy started on April 23, 2020. The Tenant is required to pay rent in the amount of \$1,600.00 which is due to be paid to the Landlord on the first day of each month. The Landlord stated that the Tenant paid a security deposit in the amount of \$800.00, which the Landlord continues to hold. The Landlord stated that the Tenant continues to occupy the rental unit and has not yet paid rent for July 2021.

The Landlord stated that he served the One Month Notice for several reasons. The Landlord stated that the Tenant has been having numerous guests over during all hours

of the night. The Landlord stated that he has received complained from neighbouring units stating that the guests are loud and are disrupting their quiet enjoyment. The Landlord stated that the Tenant's guests have threatened other occupants and engage in physical altercations. The Landlord stated that the Tenant has also been operating a short-term vacation rental, despite several warnings from the Landlord, and City Officials. The Landlord provided copies of the written letters of complaint in support.

For the above-mentioned reasons, the Landlord stated he served the Tenant in person with the One Month Notice on February 25, 2021 with an effective vacancy date of March 31, 2021.

### Analysis

Based on the uncontested documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

According to Section 47 (1) of the Act, a landlord may end a tenancy by giving notice to end the tenancy for cause.

The Landlord served the Tenant in person with a One Month Notice to End Tenancy for Cause on February 25, 2021 with an effective vacancy date of March 31, 2021. Based on the oral and written submissions of the Landlord, and in accordance with sections 88 and 90 of the Act, I find that the Tenant is deemed to have been served with the One Month Notice on February 25, 2021

Section 47(4) of the Act states that a Tenant may dispute a Notice 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 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.

As I have found that the Notice was deemed served on the Tenant on February 25, 2021 and that there is no evidence before me that the Tenant applied for Dispute Resolution within 10 days or applied for more time to cancel the Notice, I find that the Tenant is conclusively presumed to have accepted the end of her tenancy on March 31, 2021. I further find that the Landlord has provided evidence to demonstrate that he had sufficient cause to end the tenancy.

As the Landlord stated that the Tenant has not yet moved out of the rental unit and has not paid rent for July 2021, I find that the Landlord is entitled to a two-day Order of Possession which must be served on the Tenant. If the Tenant does not vacate the rental unit within the two days required, the Landlord may enforce this Order in the Supreme Court of British Columbia.

As the Landlord was successful with his Application seeking an order of possession for cause, I find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application which they may deduct from the Tenant's security deposit.

### Conclusion

The Tenant is conclusively presumed to have accepted the end of the tenancy for cause. Pursuant to Section 55 of the Act, I grant the Landlord an Order of Possession to be effective two days after notice is served on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The Landlord is permitted to deduct \$100.00 from the Tenant's security deposit.

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: July 19, 2021

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Residential Tenancy Branch