



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **OPC, FFL**

### **Introduction**

The hearing was convened as a result of the Landlord's application under the *Residential Tenancy Act* (the "Act") for:

- an Order of Possession pursuant to section 47; and
- authorization to recover the filing fee from the Tenant pursuant to section 72.

This matter was set for hearing by telephone conference call at 11:00 am on November 4, 2021. The Tenant did not attend this hearing. The teleconference line remained open while the phone system was monitored for the entire hearing in order to enable the Tenant to call into this teleconference but Tenant did not call into the hearing during this time. During the hearing I asked from time to time if the Tenant had called into the conference. I confirmed that the correct call-in numbers and participant codes were provided in the Notice of Hearing.

The landlord was represented at the hearing by its Housing Operations Manager ("JD") and Communications Coordinator ("JR").

JR testified that the Notice of Dispute Resolution Proceeding and the Landlord's evidence ("NODP Package") was served on the Tenant by registered mail on July 23, 2021. JR submitted a registered mail stub which provided the tracking number of the NODP Package to corroborate his testimony regarding service. I find that the NODP Package was served on the Tenant in accordance with sections 88 and 89 the Act.

### Issues to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to recover the filing fee for this application?

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Landlord's application and my findings are set out below.

JR testified that the tenancy started on March 1, 2019 with rent based on 30% of the Tenant's gross income, which as of the date of this hearing, is \$542.00, payable on the 1<sup>st</sup> day of each month. At the start of the tenancy agreement the Tenant provided the Landlord with a security deposit of \$270.00, which the Landlord continues to hold I trust for the Tenant. JD stated that, as of the date of this hearing, the Tenant is in rental arrears for November 2021 in the amount of \$542.00. JR testified that to his knowledge, the Tenant has not vacated the rental unit.

JR testified that the Landlord served the Tenant with a One Month Notice for Cause dated June 18, 2021 ("1 Month Notice") by attaching it to the Tenant's door on June 18, 2021. The Landlord submitted a Proof of Service on Form RTB-34 to corroborate this.

JR stated the Landlord was not aware of any application by the Tenant to dispute the 1 Month Notice. JR requested, on behalf of the Landlord, an Order of Possession to take effect as soon as possible.

### Analysis

Subsections 47(1)(d)(iii) provides that a landlord may give notice to end the tenancy if the tenant has put the landlord's property at significant risk. Subsections 47(4) and 47(5) provide:

- 47 (4) 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.

- (5) 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
- (a) is *conclusively presumed* to have accepted that the tenancy ends on the effective date of the notice, and
  - (b) must vacate the rental unit by that date.

[emphasis added in italics]

I accept the undisputed affirmed testimony of JR and find the 1 Month Notice was properly served by posting it on the Tenant's door on June 18, 2021. Pursuant to section 90 of the Act, it is deemed to have been served three days after it was posted. As such the Tenant had until July 1, 2021 (10 days after having been deemed served) to file an application to dispute the 1 Month Notice. There is no evidence before me that the Tenant made an application to dispute the 1 Month Notice. As a result, section 47(5) provides the Tenant is conclusively presumed to have accepted that the tenancy ended on July 31, 2021. As of the date of this hearing, the Tenant has not vacated the rental unit.

I have reviewed the 1 Month Notice and find that it complies with form and content requirements of section 52 of the Act. As such, I find the 1 Month Notice is valid.

Based on the foregoing, I find the Landlord is entitled to an Order of Possession pursuant to section 55 of the Act.

As the Landlord has been successful in this application, I find the Landlord is entitled to recover the \$100.00 filing fee for this application.

### Conclusion

The Landlord is provided with an Order of Possession effective two (2) days after service of this Order on the Tenant. Should the Tenant or anyone 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.

Pursuant to section 72(2)(b) of the Act, the Landlord is authorized to deduct \$100.00 from the security deposit to recover the filing fee.

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: November 5, 2021

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Residential Tenancy Branch