



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **CNC, MNDCT, FFT**

### Introduction

This hearing dealt with the Tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to Sections 47 and 62 of the Act;
2. A Monetary Order to compensate for the Tenants' monetary loss pursuant to Section 67 of the Act; and,
3. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord and her counsel team attended the hearing at the appointed date and time. Tenant, RG, and his Agent, KC, attended the hearing at the appointed date and time.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure (the "ROP") prohibits the recording of dispute resolution hearings. Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

RG stated he served the Landlord with the Notice of Dispute Resolution Proceeding on July 26, 2021 (the "Notice"), and he served the Landlord with their evidence package on October 21, 2021 (the "Evidence"). RG testified that he had served the Notice and the Evidence by Canada Post registered mail referring me to the Canada Post registered mail receipts with tracking numbers submitted into documentary evidence as proof of service. I note the Notice was sent on July 27, 2021 and the Evidence was sent on October 21, 2021. I have noted the registered mail tracking numbers on the cover sheet

of this decision. The Landlord did confirm receipt of both the Notice and Evidence. I find that RG served the Notice and the Evidence in accordance with Sections 89(1)(c) of the Act.

### Preliminary Matter

Pursuant to ROP 2.3 which deals with application claims, it states, “*Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to re-apply.*”

I find that the monetary application is unrelated to the Tenants’ application to cancel the One Month Notice. I advised the parties that this application would only deal with the One Month Notice, and the monetary claim would be dismissed with leave to re-apply. I note that the Tenants objected to the severing of their claims.

### Issues to be Decided

1. Is the Tenant entitled to a cancellation of the Landlord’s One Month Notice?
2. Is the Tenant entitled to recovery of the application filing fee?

### Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The tenancy agreement was submitted into documentary evidence and it shows this tenancy began as a fixed tenancy on July 1, 2017 and ending on June 30, 2018. The tenancy continued as a month-to-month tenancy. Monthly rent is \$2,200.00 payable on the first day of each month. A security deposit of \$1,100.00 was collected at the start of the tenancy.

The Landlord served the Tenants with a One Month Notice on June 30, 2021 by posting it on the door of the rental unit. The Landlord provided a text message to the Tenants indicating service of the notice to end tenancy. The One Month Notice stated the reason why the Landlord was ending the tenancy was because the Tenant or a person permitted on the property by the Tenant has put the Landlord’s property at significant

risk on two occasions. The effective date of the notice was July 31, 2021. The Tenants confirmed receipt of the One Month Notice on July 1, 2021.

The Landlord's counsel submitted that changing the effective date of the One Month Notice to August 30, 2021 to keep in line with providing a proper full month's notice was not an issue, considering that it is already over three months since the notice was served.

The Tenants filed for dispute resolution on July 13, 2021.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 53(3) of the Act permits incorrect effective dates to change. The Tenant confirmed receipt of the One Month Notice on July 1, 2021. The corrected effective date that complies with the required notice is, I find, August 31, 2021.

Section 47(4) of the Act provides that upon receipt of a one month notice to end tenancy for cause, a tenant may, within 10 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

The Tenants confirmed receipt of the One Month Notice on July 1, 2021. Pursuant to section 47(4) of the Act, the Tenants therefore had until July 12, 2021 to dispute the notice. I note that ten days after receipt of the notice was July 11, 2021 which was a Sunday. The dispute resolution application was therefore due on July 12, 2021, the next business day.

I find that the Tenants have failed to file an application for dispute resolution within the 10 days of having received the One Month Notice. Accordingly, I find that the Tenants are conclusively presumed under Section 47(5)(a) of the Act to have accepted that the tenancy ended on the effective date of the notice, in this case, August 31, 2021.

Section 55(1) of the Act reads as follows:

- 55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*
- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*
  - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

I find that the One Month Notice submitted into documentary evidence complies with Section 52 of the Act. Based on my finding that this tenancy is conclusively presumed to have ended, I order that the Tenants' application for dispute resolution to cancel the One Month Notice is dismissed without leave to re-apply. As the Tenants were not successful in their claim, I do not grant their recovery of the filing fee.

I uphold the Landlord's One Month Notice and grant an Order of Possession to the Landlord which will be effective two (2) days after service on the Tenant.

### Conclusion

The Tenants' application for dispute resolution is dismissed, and the Landlord is granted an Order of Possession, which will be effective two (2) days after service on the Tenants. The Order of Possession may be filed in and enforced as an Order of the British Columbia Supreme Court.

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: November 16, 2021

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Residential Tenancy Branch