



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, MNDCL-S, FFL

### Introduction

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

- an Order of Possession for cause, pursuant to sections 47 and 55;
- a Monetary Order for damage or compensation, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:15 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. The landlord's agent (the "agent") attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The agent called witness R.Y. (the "witness") who provided affirmed testimony. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the agent, witness and I were the only ones who had called into this teleconference.

The agent testified that the tenant was served with the landlord's application for dispute resolution and evidence via registered mail on July 28, 2021. The agent entered into evidence a registered mail receipt for same. The Canada Post website states that the above package was delivered on July 31, 2021. I find that the tenant was served with the above package on July 31, 2021 in accordance with sections 88 and 89 of the *Act*.

### Issues to be Decided

1. Is the landlord entitled to an Order of Possession for cause, pursuant to sections 47 and 55 of the *Act*?
2. Is the landlord entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to retain the tenant's security deposit, pursuant to section 38 of the *Act*?
4. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the agent and witness, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the agent and witness's testimony and my findings are set out below.

The agent provided the following undisputed testimony. This tenancy began on April 1, 2006 and is currently ongoing. Monthly rent in the amount of \$1,294.00.00 is payable on the first day of each month. A security deposit of \$550.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The agent testified that a One Month Notice to End Tenancy for Cause (the "One Month Notice") and Appendix B – Notice to End a Residential Tenancy were posted on the tenant's door on February 24, 2021. The Appendix B – Notice to End a Residential Tenancy is an old notice to end tenancy form circa 1998.

The One Month Notice is dated February 24, 2021 and states that the tenant must vacate the subject rental property by March 31, 2021. The One Month Notice was entered into evidence and states the following reasons for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord;
  - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;

- put the landlord's property at significant risk.
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
  - damage the landlord's property;
  - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant;
  - Jeopardize a lawful right or interest of another occupant or the landlord.
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.
- Breach of material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;
- Tenant has assigned or sublet the rental unit/site without the landlord's written consent.

The agent entered into evidence a witnessed proof of service document which states that the One Month Notice was posted on the tenant's door on February 24, 2021. The witness testified that he witnessed the agent post the One Month Notice on the tenant's door.

The agent testified that the landlord previously applied for an Order of Possession for cause based on the One Month Notice but the previous application was dismissed with leave to reapply for failure to serve the application for dispute resolution in accordance with section 89 of the *Act*. The previous decision dated July 8, 2021 was entered into evidence and confirms the above testimony. The file number for the previous hearing is located on the cover page of this decision. This application for dispute resolution was filed on July 14, 2021.

The tenant has not filed an application for dispute resolution seeking to cancel the One Month Notice.

The agent testified that the One Month Notice was served on the tenant because her roommate has caused significant damage to the property by attempting to make repairs himself, without authorization. The agent testified that on at least two occasions the tenant's roommate has caused significant water damage when trying to fix a toilet in the subject rental property.

### Analysis

Based on the witnessed proof of service document and the testimony of the witness, I find that the tenant was deemed served with the One Month Notice on February 27, 2021 in accordance with sections 88 and 90 of the *Act*.

Section 47(4) and section 47(5) of the *Act* state that if a tenant who has received a One Month Notice does not make an application for dispute resolution within 10 days after the date the tenant receives the notice, 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.

The tenant did not dispute the Notice within 10 days of receiving it. I find that, pursuant to section 47(5) of the *Act*, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, that being March 31, 2021. As the tenant did not vacate the subject rental property on that date, I award the landlord a two-day order of possession. The landlord will be given a formal 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.

The landlord's application for dispute resolution seeks to recover the \$100.00 filing fee for this application for dispute resolution in addition to the \$100.00 filing fee from the previous application for dispute resolution. I find that since the landlord was successful in this application for dispute resolution the landlord is entitled to recover the \$100.00 filing fee for this application for dispute resolution, pursuant to section 72 of the *Act*. I find that the landlord is not entitled to recover the \$100.00 filing fee from the previous application because the necessity for a second application arose from the landlord's failure to correctly serve the tenant. I find that the landlord must bear the original filing fee because it was the landlord's error that necessitated two applications.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain \$100.00 from the tenant's security deposit.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service 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 entitled to retain \$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: November 15, 2021

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Residential Tenancy Branch