



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding H.W. ROOMS INC  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC, FFL

### Introduction

This hearing dealt with a landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) to obtain an order of possession based on an undisputed 1 Month Notice to End Tenancy for Cause dated September 30, 2021 (1 Month Notice), and to recover the cost of the filing fee.

An agent for the landlord company, CA (agent) appeared at the teleconference hearing and gave affirmed testimony. During the hearing the agent and owner were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated November 23, 2021 (Notice of Hearing), application and documentary evidence were considered. The agent testified that the Notice of Hearing, application and documentary evidence were served on the tenants by registered mail with one package addressed to each of the two tenants, KJ and ES (tenants). The registered mail tracking numbers have been included on the style of cause for ease of reference and identified as 1 and 2. According to the Canada Post online registered mail tracking website that both packages were addressed to the tenants, with one package per tenant, and addressed to the rental unit address as both tenants continue to occupy the rental unit. The packages are shown having been mailed on November 26, 2021. Section 90 of the Act indicates that both packages are deemed served 5 days after they have been mailed. Therefore, based on the undisputed testimony before me, and the documentary evidence, I accept that the tenants were deemed sufficiently served as of December 1, 2021.

Given the above, the hearing continued without the tenants present in accordance with Rule 7.1 and Rule 7.3 of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules), which address consequences for not attending a dispute resolution hearing.

### Preliminary and Procedural Matters

The agent was informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The agent was also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the agent was informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. The agent did not have any questions about my direction pursuant to RTB Rule 6.11.

In addition, the agent confirmed their email address at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them. As the agent did not have an email address for the tenant, this decision will be sent by regular mail to the tenants.

### Issues to be Decided

- Is the landlord entitled to an order of possession based on an undisputed 1 Month Notice?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month-to-month tenancy agreement began on May 15, 2019. Monthly rent in the amount of \$850.00 was due on the first day of each month. The tenants paid a security deposit of \$425.00 at the start of the tenancy, which the landlord continues to hold and which has accrued \$0.00 in interest to date.

The agent confirmed service of the 1 Month Notice by posting to the tenants' door on September 30, 2021. The agent stated that they know the tenants received the 1 Month Notice on September 30, 2021, as they came to talk to the agent on September 30, 2021, complaining that they were served with the 1 Month Notice. As a result, I find the

tenants were served as of September 30, 2021, based on the undisputed evidence before me.

The 1 Month Notice included an effective vacancy date of October 31, 2021, and indicated one cause on page two of the 1 Month Notice, as follows:

- ☐ Tenant or a person permitted on the property by the tenant has (check all boxes that apply):
- ☐ 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

In the Details of Cause(s) section, the landlord indicated the following:

Details of Causes(s): Describe what, where and who caused the issue and include dates/times, names etc. This information is required. An arbitrator may cancel the notice if details are not provided.

Details of the Event(s):  
on multiple occasions the tenants have caused 2 mattress fires and a flood

The agent affirmed that the tenants did not dispute the 1 Month Notice and failed to vacate the rental unit by October 31, 2021 or any day since that date. The agent stated that the landlord is seeking an order of possession as the tenants continues to occupy the rental unit. The agent confirmed that the tenants paid money for use and occupancy for the month of December 2021.

According to the agent, the tenants have caused two fires, both involving a mattress with the first mattress being set on fire a year ago and the second fire being 4 months ago in July 2021. The agent also stated that the tenants flooded the rental unit on August 15, 2021, when they left their sink running for over an hour, which flooded in the bar located below the rental unit.

### Analysis

Based on the undisputed documentary evidence of the landlord and undisputed testimony provided by the agent during the hearing, and on the balance of probabilities, I find the following.

**Order of possession** – Section 47 of the Act states that if the tenant once served with the 1 Month Notice does not dispute the 1 Month Notice within 10 days of receiving the 1 Month Notice, the tenant is conclusively presumed to have accepted the 1 Month Notice and must vacate the rental unit on the effective vacancy. In the matter before

me, the tenant did not dispute the 1 Month Notice and as a result, I find the tenancy ended on the effective vacancy date, which was October 31, 2021. As the tenants continue to occupy the rental unit, I find the tenants are overholding the rental unit. Therefore, pursuant to section 55 of the Act, I grant the landlord an order of possession effective **December 31, 2021 at 1:00 p.m.** as money for use and occupancy has been confirmed as paid for December 2021. I have reviewed the 1 Month Notice and find that it complies with section 52 of the Act. I also find that two fires and one flood meets the ground listed on the 1 Month Notice.

In addition, as the landlord's application was successful and pursuant to section 72 of the Act, I grant the landlord **\$100.00** for the recovery of the cost of the filing fee under the Act. As the agent requested that the filing fee be deducted from the \$425.00 security deposit, which has accrued no interest to date, **I authorize** the landlord to retain **\$100.00** effective immediately from the tenants' security deposit pursuant to sections 62(3) and 72 of the Act. I find that the tenants' security deposit balance is now \$325.00 as a result.

### Conclusion

The landlord's application is fully successful. The tenancy ended October 31, 2021. The tenants have been overholding the rental unit since that date.

The landlord is granted an order of possession effective December 31, 2021 at 1:00 p.m. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia. I caution the tenants that they can be held liable for all costs related to enforcing the order of possession.

The landlord has been authorized to retain \$100.00 from the tenants' security deposit of \$425.00 for the filing fee. The new security deposit balance is \$325.00.

The decision and orders will be emailed to the landlord. The decision will be sent by regular mail to the tenants.

The landlord must serve the orders on the tenants.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: December 22, 2021