



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, MND-S, FF

### Introduction

This hearing was convened as a result of the landlord's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act). The landlord applied for:

- an order of possession for the rental unit pursuant to a One Month Notice to End Tenancy for Cause (Notice) served on the tenant;
- compensation for alleged damage to the rental unit by the tenant; and
- to recover the cost of the filing fee.

The landlord and the landlord's agent (agent) attended the telephone conference call hearing; the tenant did not attend or file written evidence for the hearing.

The agent provided their affirmed testimony. The agent testified that they served the tenant with their Application for Dispute Resolution, evidence, and Notice of Hearing (application package) by registered mail on or about August 6, 2021. The Canada Post registered mail receipt and tracking information was filed in evidence by the landlord.

The agent said further that the tenant failed to collect the registered mail. I find that the tenant's failure to collect registered mail to avoid service is insufficient to overcome the deemed received provision under section 90 of the Act.

Based upon the submissions of the landlord, I accept and find the tenant was served notice of this hearing and the landlord's application in a manner complying with section 89(1) of the Act and the hearing proceeded in the tenant's absence.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the submissions are reproduced here.

#### Preliminary and Procedural Matters-

The agent was informed that the application showed that the landlord's monetary claim was premature at this time and was unrelated to the primary issue of the application, which I determined was enforcement of the Notice.

I therefore sever the landlord's monetary claim and dismiss the same, with leave to reapply.

#### Issue(s) to be Decided

Is the landlord entitled to an order of possession of the rental unit as a result of the Notice and to recover the cost of the filing fee?

#### Background and Evidence

This tenancy began on July 22, 2019 and monthly rent is \$1,250.

The agent submitted evidence that they served the tenant the Notice by registered mail on November 16, 2021. The Notice was dated November 12, 2021, and listed an effective end of tenancy date of December 31, 2021. The landlord filed a copy of the Notice into evidence.

The Canada Post registered mail receipt and tracking information was filed in evidence by the landlord. The agent said that the tenant failed to collect the registered mail, but tried to speak to the tenant, but the tenant has cut off communication with the landlord, his grandfather, and his mother, the agent.

The cause listed on the Notice stated:

- the tenant has allowed an unreasonable number of occupants in a rental unit;
- the tenant or a person permitted on the residential property by the tenant has;
  - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

- (iii) put the landlord's property at significant risk;
- the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has;
  - (iii) jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- the tenant has not done required repairs of damage to the rental unit or other residential property, within a reasonable time after written notice to do;
- the tenant breached a material term of the tenancy agreement that was not corrected within a reasonable time after the landlord gives written notice to do so;

The agent stated an occupant smokes drugs in the rental unit, which is against the written tenancy agreement, and that the other occupant assaulted her. The agent stated that the tenant refuses the landlord or agent access to the parts of the residential property that is not being rented to the tenant. The agent explained that some of the landlord's personal property is kept in the residential property apart from the tenant's rental unit.

### Analysis

I have reviewed all the relevant evidence and I find that the tenant was served with the Notice as declared by the landlord by registered mail on November 16, 2021, which listed a move-out date of December 31, 2021. I find the tenant was deemed to have received the Notice on November 21, 2021, five days after it was mailed.

The agent said that the registered mail was returned to her because the tenant failed to collect the mail. I find that the tenant's failure to collect registered mail to avoid service is insufficient to overcome the deemed received provision under section 90 of the Act. I therefore find the tenant was sufficiently served with the Notice.

The Notice served on the tenant sets out that the tenant had ten (10) days to file an application for dispute resolution in dispute of the Notice. It also sets out that if the tenant did not file such an application within ten days, then the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit by the effective date of the Notice, in this case, December 31, 2021.

I have no evidence before me that the tenant filed to make an application for dispute resolution to contest the Notice.

As such, I therefore find the tenant is conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, or December 31, 2021.

I have reviewed the Notice and find it was completed in accordance with section 47 of the Act. I also find the Notice was completed in the approved form and the content meets the statutory requirements under section 52 the Act.

I have reviewed the landlord's undisputed evidence and find they had sufficient cause to end the tenancy based upon the drug use, assault and refusal of entry.

I therefore **order** the tenancy ended on December 31, 2021.

I find the landlord is entitled to and I **grant an order of possession of the rental unit (Order)**, pursuant to section 55(2)(b) of the Act, effective **two days** after service of the order upon the tenant.

Should the tenant fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenant is cautioned that costs of such enforcement, **such as bailiff costs and filing fees**, are recoverable from the tenant.

Due to their successful application, I grant the landlord recovery of their filing fee of \$100. At the landlord's request, I allow the landlord to deduct \$100 from the tenant's security deposit in satisfaction of their monetary award.

### Conclusion

The tenancy has been ordered ended on December 31, 2021.

The landlord's application for an order of possession of the rental unit is granted.

The landlord has been issued an order of possession of the rental unit, effective two days after service of the order upon the tenant.

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*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: March 11, 2022

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Residential Tenancy Branch