



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Cyclone Holdings  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC, FFL

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an Order of Possession for Cause, based on having served the Tenant with a One Month Notice to End Tenancy for Cause dated November 25, 2021; and to recover the \$100.00 cost of their Application filing fee.

An agent for the Landlord, P.B. ("Agent"), and an assistant for the Agent, S.M. ("Assistant"), appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant. The teleconference phone line remained open for over 15 minutes and was monitored throughout this time. The only people to call into the hearing were the Landlord and the Assistant, who indicated that they were ready to proceed.

I explained the hearing process to the Agent and gave her an opportunity to ask questions about it. One witness for the Landlord was also present and available to provide affirmed testimony; however, the Agent did not call the Witness to testify during the hearing.

The Agent was given the opportunity to provide her evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The Agent testified that she served the Tenant with the Notice of Hearing documents by Canada Post registered mail, sent on January 14, 2022. The Agent provided a Canada Post tracking number as evidence of service.

Further, the Assistant offered that he had been at the residential property in the prior week, and he met the Tenant and asked him if he was aware of the teleconference hearing in this matter. The Assistant also asked the Tenant he had the call-in information and understood how to call in. The Assistant confirmed that the Tenant very politely advised that he was aware of the hearing and knew how to call in. The Assistant said he told the Tenant that it is very important that he call in, as it involves his ongoing tenancy.

Based on the evidence before me in this matter overall, I find that the Tenant was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Agent in the absence of the Tenant.

#### Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses in the Application and the Agent confirmed the Landlord's email address in the hearing. She also confirmed her understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Agent that pursuant to Rule 7.4, I would only consider the Landlord's written or documentary evidence to which she pointed or directed me in the hearing. I also advised the hearing participants that they are not allowed to record the hearing, and that anyone who was recording it was required to stop immediately.

#### Issue(s) to be Decided

- Is the Landlord entitled to an order of possession?
- Is the Landlord entitled to the \$100.00 Application filing fee from the Tenant?

#### Background and Evidence

The tenancy agreement states, and the Agent confirmed that the fixed term tenancy began on September 1, 2009, and ran to August 31, 2010, and then operated on a

month-to-month basis. The Agent advised that the tenancy agreement requires the Tenant to pay the Landlord a current monthly rent of \$887.43, due on the first day of each month. The Agent agreed that the Tenant paid the Landlord a security deposit of \$362.50, and no pet damage deposit. She confirmed that the Landlord still holds the security deposit for this tenancy.

The One Month Notice was signed and dated November 25, 2021, it has the rental unit address, it was served by posting it on the rental unit door on November 25, 2021, with an effective vacancy date of December 31, 2021, and it was served on the grounds that the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord; and that the Tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. The Landlord also noted details of the Tenant's behaviour in the Details of Causes section of the Notice.

There is no evidence before me that the Tenant applied to the RTB to dispute the Landlord's Application.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Based on the evidence before me for consideration, and pursuant to section 90 of the Act, I find that the Tenant was deemed served with the One Month Notice on November 30, 2021, five days after it was served by registered mail.

Section 47 (5) of the Act states that if a tenant who has received a One Month Notice does not apply 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.

As there is no evidence before me that the Tenant disputed the One Month Notice, I find that he is conclusively presumed under section 47 (5) of the Act to have accepted the One Month Notice, and I find that the tenancy, therefore, ended on December 31, 2021. As a result, I find that the Tenant is overholding the rental unit and that the Landlord is, therefore, entitled to an Order of Possession pursuant to section 55 (2) (b) of the Act.

I, therefore, grant the Landlord an **Order of Possession** pursuant to section 55 of the

Act. As the effective vacancy date of the One Month Notice has passed and the Agent testified that rent for the unit has not been paid, the **Order of Possession will be effective two days after service on the Tenant.**

I also find that the Landlord is entitled to recovery of the \$100.00 Application filing fee from the Tenant, pursuant to section 72 of the Act. I grant the Landlord **\$100.00** from the Tenant in this matter, and I authorize the Landlord to retain \$100.00 from the Tenant's security deposit in complete satisfaction of this award.

### Conclusion

The Landlord is successful in their Application, as the Tenant failed to dispute the Landlord's Application; and therefore, he is conclusively presumed by the Act to have accepted the end of the tenancy, as set out in the One Month Notice.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to section 72 of the Act, I award the Landlord with recovery of the Landlord's **\$100.00** Application filing fee from the Tenant. The Landlord is authorized to retain \$100.00 from the Tenant's security deposit in complete satisfaction of this award.

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: April 04, 2022

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Residential Tenancy Branch