



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPC, MNRL-S, FFL

### Introduction

This hearing dealt with the Landlord's application under the *Residential Tenancy Act* (the "Act") for:

- an Order of Possession under a One Month Notice to End Tenancy for Cause dated January 10, 2022 (the "One Month Notice"), pursuant to sections 47 and 55;
- a Monetary Order of \$950.00 for unpaid rent pursuant to sections 26 and 67 and to keep the Tenant's security deposit pursuant to section 72(2)(b); and
- authorization to recover the filing fee for this application from the Tenant pursuant to section 72.

The Landlord's agents JL and TL attended this hearing, and were given a full opportunity to be heard, to present affirmed testimony, and to make submissions.

The Tenant did not attend this hearing. I left the teleconference hearing connection open until 1:40 pm in order to enable the Tenant to call into the hearing scheduled to start at 1:30 pm. I confirmed that the correct call-in numbers and participant access code had been provided in the notice of dispute resolution proceeding. I used the teleconference system to confirm that the Landlord's agents and I were the only ones who had called into the hearing.

All attendees at the hearing were advised the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings. They confirmed they were not recording this dispute resolution hearing.

### Preliminary Matter – Service of Dispute Resolution Documents

JL stated she served the Tenant with the notice of dispute resolution proceeding package and the Landlord's documentary evidence (collectively, the "NDRP Package")

by posting to the Tenant's door on March 17, 2022. Based on JL's testimony, I find the Tenant has been served with the NDRP Package in accordance with sections 88(g) and 89(2)(d) of the Act. I further find that pursuant to section 90 of the Act, the Tenant is deemed to have received the NDRP Package on March 20, 2022.

#### Preliminary Matter – Tenant's Name

JL confirmed she recently saw a copy of the Tenant's photo ID and realized that the Tenant had misrepresented her name at the start of the tenancy. JL confirmed she recognizes the Tenant in the photo ID. Based on JL's testimony, I amended this application to include both names used by the Tenant.

#### Preliminary Matter – Severing Unrelated Claims

Rules 2.3 and 6.2 of the Rules of Procedure state:

##### **2.3 Related issues**

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 reapply.

##### **6.2 What will be considered at a dispute resolution hearing**

The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application.

The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [*Related issues*]. For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply. (emphasis added)

In this application, the Landlord's primary claim is to seek an Order of Possession pursuant to a one month notice to end tenancy for cause. I find that the Landlord's secondary claim for unpaid rent and request to retain the Tenant's security deposit (for offsetting against unpaid rent and damage to the rental unit) to be unrelated to the Landlord's claim for an Order of Possession.

Accordingly, I dismiss the Landlord's claim for unpaid rent and to retain the Tenant's security deposit with leave to re-apply. The Landlord is at liberty to file a separate application with respect to those issues.

### Issues to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to recover the filing fee?

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

The Landlord submitted a copy of the parties' tenancy agreement into evidence. JL confirmed the particulars of the tenancy as follows:

- The tenancy commenced on November 1, 2020 and is currently month-to month.
- Rent is \$1,900.00 per month, due on the first day of each month.
- The Tenant paid a security deposit of \$950.00, which is held by the Landlord.

A copy of the One Month Notice is included in the Landlord's submitted evidence. The One Month Notice is dated January 10, 2022 and has an effective date of February 28, 2022. The One Month Notice states the following details of cause:

*Tenant has been repeatedly late in payment of rent; tenant has engaged in illegal activity from suite; tenant has violated tenancy agreement by smoking, allowing other tenants to reside that are not on the tenancy agreement; violated pet regulations; violated parking regulations; violated quiet enjoyment of property for neighbouring tenants with domestic disputes; drawn landlord's agent into criminal proceedings.*

JL confirmed she served the One Month Notice by posting it to the Tenant's door on January 10, 2022.

The Landlord submitted written witness statements from JL and TL in support of the details of cause stated in the One Month Notice.

JL confirmed the Tenant has neither disputed the One Month Notice nor moved out of the rental unit.

### 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.

#### *1. Is the Landlord entitled to an Order of Possession?*

Section 47 of the Act permits a landlord to end a tenancy for cause by issuing a one month notice to the tenant. Section 47(1) provides a list of grounds which may constitute cause under this section.

Section 47(3) of the Act requires that the notice to end tenancy given by a landlord comply with section 52 of the Act in order to be effective. Section 52 states:

#### **Form and content of notice to end tenancy**

- 52 In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
  - (b) give the address of the rental unit,
  - (c) state the effective date of the notice,
  - (d) except for a notice under section 45(1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
  - (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
  - (e) when given by a landlord, be in the approved form.

In this case, I have reviewed a copy of the One Month Notice and find that it complies with the requirements of section 52 in form and content.

I accept JL's testimony and find that a copy of the One Month Notice was posted to the Tenant's door on January 10, 2022, in accordance with section 88(g) of the Act. I find that pursuant to section 90(c) of the Act, the Tenant is deemed to have received the One Month Notice on January 13, 2022.

Section 47(4) of the Act permits a tenant to dispute a one month notice to end tenancy for cause within 10 days after receiving such notice. Therefore, the Tenant had until January 23, 2022 to dispute the One Month Notice. In this case, the Tenant did not apply to dispute the One Month Notice by January 23, 2022 or at all.

Section 47(5) of the Act states that if a tenant who has received a notice under section 47 does not make an application for dispute resolution in accordance with section 47(4), 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.

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 One Month Notice, which is February 28, 2022.

Furthermore, section 55(2)(b) of the Act states as follows:

**Order of possession for the landlord**

55 [...]

(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

[...]

(b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired; [...]

In this case, the time for disputing the One Month Notice expired on January 23, 2022, and the Tenant did not make an application for dispute resolution. Accordingly, I conclude that the Landlord is entitled to an Order of Possession pursuant to section 55(2)(b) of the Act.

I grant an Order of Possession to the Landlord effective two (2) days after service of the Order upon the Tenant.

*2. Is the Landlord entitled to recover the filing fee?*

The Landlord has been successful in this application. I grant the Landlord's claim for recovery of the \$100.00 filing fee under section 72(1) of the Act.

Pursuant to section 72(2)(b) of the Act, I order that the Landlord is authorized to deduct \$100.00 from the \$950.00 security deposit held by the Landlord in full satisfaction of the amount awarded in this application.

### Conclusion

The Tenant is conclusively presumed to have accepted the tenancy ended on February 28, 2022.

Pursuant to section 55(2)(b) of the Act, I grant an Order of Possession to the Landlord effective two (2) days after service upon the Tenant. 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.

The Landlord is authorized to deduct \$100.00 from the Tenant's security deposit on account of the filing fee awarded in this application.

The Landlord's claim for unpaid rent (plus damage to the rental unit) and to retain the balance of the Tenant's security deposit (\$850.00) is dismissed with leave to re-apply. The Landlord is at liberty to file a separate application for monetary compensation, including compensation for overholding by the Tenant beyond the end date of the tenancy. Leave to re-apply does not extend any applicable limitation periods.

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: July 5, 2022

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Residential Tenancy Branch