



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPN, OPC, FFL

### Introduction

The Landlord seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- An order of possession pursuant to s. 55 after the Tenant gave written notice to end tenancy;
- An order of possession pursuant to s. 55 after having issued a One-Month Notice to End Tenancy signed on February 25, 2022 (the “One-Month Notice”); and
- Return of its filing fee pursuant to s. 72.

R.H. appeared as counsel for the Landlord. D.S. appeared and is the manager for the Landlord. M.S. appeared as the Tenant.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

Landlord’s counsel advised that the Notice of Dispute Resolution and the Landlord’s initial evidence package was personally served on the Tenant on April 22, 2022 via process server. The Tenant acknowledges service of the Landlord’s application and initial evidence. I find that the Notice of Dispute Resolution and the Landlord’s initial evidence was served in accordance with s. 89 of the *Act*.

Landlord’s counsel further advised that an additional evidence package was personally served on the Tenant on July 23, 2022. The Tenant acknowledges receipt of the Landlord’s additional evidence, though says it was received on July 29, 2022.

Landlord's counsel directed me to an email from the process server dated July 25, 2022 confirming service on July 23, 2022 at 11:05 AM. The Tenant testified to receiving many different documents from the Landlord, including a separate application which is not before me today. However, the Tenant clarified and acknowledged receipt of the Landlord's additional evidence on July 23, 2022.

Rule 3.14 of the Rules of Procedure permits applicants to serve additional evidence provided it is received by the respondent at least 14 days prior to the hearing. As the Tenant acknowledged receipt on July 23, 2022, I find that the Landlord's additional evidence was served in accordance with s. 89 of the *Act* and was received prior to the relevant deadline.

The Tenant advised that she served evidence on the Landlord in two packages sent via registered mail. The Landlord acknowledges receipt of both evidence packages, though indicates that the second evidence package was received only received on August 9, 2022. The Tenant advises that the second evidence package was sent via registered mail on August 3, 2022 and was sent when it was because of the Landlord's second evidence package. Landlord's counsel objects to the second evidence package.

Rule 3.15 requires respondents to serve the evidence upon which they intend to rely as soon as possible and must be received by the applicants at least 7 days prior to the hearing. In the present instance, the second evidence package may have been sent via registered mail within the proscribed time limit, however it was not received by the applicant at least 7 days prior to the hearing as required by Rule 3.15 of the Rules of Procedure.

As the Tenant failed to serve her second evidence package within the proscribed time limit imposed by Rule 3.15 of the Rules of Procedure, I find that it would be procedurally unfair to the Landlord to permit its inclusion into the record.

Accordingly, I find that the Tenant has demonstrated service of the initial evidence package in accordance with s. 89 of the *Act*. The second evidence package was not properly served and is not included in the record and shall not be considered by me in these reasons.

### Issues to be Decided

- 1) Is the Landlord entitled to an order of possession?
- 2) Is the Landlord entitled to the return of its filing fee?

### Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenant took occupancy of the rental unit on May 1, 2021.
- Rent of \$1,000 is due on the first day of each month.
- The Landlord holds a security deposit of \$500.00 in trust for the Tenant.

A copy of the tenancy agreement was put into evidence by the Landlord.

Landlord's counsel advises that the Tenant was personally served with the One-Month Notice on February 26, 2022 via process server. The Landlord's evidence includes an email dated March 1, 2022 from the process server advising the One-Month Notice was served on February 26, 2022 at 9:55 AM. The Tenant acknowledges receipt of the One-Month Notice.

Landlord's counsel advises that the Tenant never filed an application disputing the One-Month Notice. The Tenant confirmed that she never filed an application to dispute the One-Month Notice.

Landlord's counsel further advised that the Landlord received a notice from the Tenant on March 1, 2022 stating that the Tenant was given notice to vacate the rental unit on April 31, 2022. The Tenant provided notice via email and by way of paper copy posted to the Landlord's office door. The Landlord's evidence includes a copy of the March 1, 2022 email and a picture of the notice posted to the Landlord's door. Both the email and the written notice list the end date for the tenancy as April 31, 2022, despite there only being 30 days in April.

The Tenant confirmed giving notice to the Landlord on March 1, 2022 that she would be vacating the rental unit. The Tenant raised allegations that the Landlord had towed her

truck and that there was some dispute with respect the return of the truck or its value. The Tenant says that she had or would be filing a separate action in small claims with respect to that matter.

Landlord's counsel says that the Tenant has not paid rent for some time and that when rent was paid the Landlord noted it was for use and occupancy only.

The Tenant confirmed that she continues to reside within the rental unit.

### Analysis

The Landlord seeks an order of possession.

There is no dispute with respect to service of the One-Month Notice. The Landlord advises that it was personally served on the Tenant. The Tenant acknowledges receiving the One-Month Notice. I find that the One-Month Notice was served in accordance with s. 88 of the *Act*.

I have reviewed the One-Month Notice and find that it complies with the formal requirements of s. 52 of the *Act*. It is signed and dated by the Landlord, states the address for the rental unit, states the correct effective date, sets out the grounds for ending the tenancy, and is in the approved form (RTB-33). The effective date set out in the notice is March 31, 2022.

Pursuant s. 47 of the *Act*, a landlord may end a tenancy for cause and serve a one-month notice to end tenancy on the tenant. Pursuant to s. 47(4) of the *Act*, a tenant that chooses to dispute a one-month notice to end tenancy must do so by filing an application with the Residential Tenancy Branch within 10 days of receiving the notice. Indeed, at the top of the Notice to End Tenancy it states the following:

You have the right to dispute this Notice **within 10 days** of receiving it, by filing an Application for Dispute Resolution with the Residential Tenancy Branch online, in person at any Service BC Office or by going to the Residential Tenancy Branch Office at #400 - 5021 Kingsway in Burnaby. If you do not apply within the required time limit, you are presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date of this Notice.

In this case, the Tenant admits that she never filed an application to dispute the One-Month Notice. I find that the Tenant failed to file an application to dispute the notice within the 10 days permitted to her under s. 47(4) of the *Act*. Given this, I find that s. 47(5) is engaged such that the Tenant is conclusively presumed to have accepted the end of the tenancy and ought to have moved out on the effective date listed in the notice, which was March 31, 2022.

As the Tenant continues to reside within the rental unit, I find that the Landlord is entitled to an order of possession.

I need not consider the Tenant's notice dated March 1, 2022 as the Landlord is entitled to an order of possession as set out above.

### Conclusion

The Tenant is conclusively presumed to have accepted the end of the tenancy as per s. 47(5) of the *Act*. As the Tenant continues to reside within the rental unit, the Landlord is entitled to an order of possession pursuant to s. 55 of the *Act*. I order that the Tenant give vacant possession of the rental unit to the Landlord within **two (2) days** of receiving the order of possession.

I make no findings or orders with respect to the Landlord's claim for an order of possession pursuant to the Tenant's notice dated March 1, 2022.

The Landlord was successful in its application. I find that it is entitled to the return of its filing fee. Pursuant to s. 72(1) of the *Act*, I order that the Tenant pay the Landlord's \$100.00 filing fee. I direct pursuant to s. 72(2) of the *Act* that the Landlord withhold \$100.00 from the Tenant's security deposit in full satisfaction of its filing fee.

It is the Landlord's obligation to serve the order of possession on the Tenant. If the Tenant does not comply with the order of possession, it may be filed by the Landlord with the Supreme Court of British Columbia and enforced as an order of that Court.

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: August 11, 2022

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Residential Tenancy Branch