



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **CNC, OLC, FFT**

### **Introduction**

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (“Act”) for orders as follows:

- cancellation of the landlords’ One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to section 47
- for an order requiring the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62 of the Act
- reimbursement of the filing fee pursuant to section 72

Both parties attended the hearing with the landlord represented by MT, while the tenants were represented by tenant AY. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

Both parties confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The landlord sent the One Month Notice dated April 27, 2022 to the tenant by registered mail on April 27, 2022. It was sent to the address of the rental property, where the tenants reside. It was returned to the landlord as it was not picked up by the tenant. The landlord then posted the One Month Notice on the tenant’s door on May 27, 2022 and provided a proof of service of the that document signed by a witness on that date. Pursuant to section 88 of the Act the tenant is found to have been served with this notice in accordance with the Act. The landlord acknowledged receipt of the dispute notice dated May 31, 2022 and package service is in accordance with sections 88 and 89 of the Act.

## Preliminary Issues

### Amendment

The tenant AY confirmed that one of the tenants, MM was inadvertently listed twice on the application for dispute resolution. The application is amended to remove the duplicate listing of that tenant's name.

### Notice

The landlord served the One Month Notice by registered mail, sent on April 27, 2022. Registered mail is an acceptable for of service under the Act:

**88** All documents, other than those referred to in [section 89](#) [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

(c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

The One Month Notice sent by registered mail was returned to the landlord and he then took the precaution of serving the One Month Notice by leaving a copy on the tenants' door. He did this on May 27, 2022. The effective date of the One Month Notice was May 31, 2022.

Section 90 of the Act outlines when documents that are properly served under section 88 are considered to be received:

**90A** A document given or served in accordance with [section 88](#) [*how to give or serve documents generally*] or 89 [*special rules for certain documents*], unless earlier received, is deemed to be received as follows:

(a) if given or served by mail, on the fifth day after it is mailed;

This is known as deemed service. As the landlord took the appropriate steps to serve the documents under the Act, they are entitled to rely on the deemed service provisions under section 90 of the Act. Applying the deemed service provisions to this One Month

Notice, the landlord is entitled to consider the One Month Notice served on May 2, 2022.

The tenant in evidence did not provide an explanation for not picking up the registered mail. He stated that he always picks up the mail. I do not find that to be evidence sufficient to overcome a finding that the deemed service provisions should apply in this case. RTB Policy Guidelines section 12 states in part:

Where a document is served by Registered Mail or Express Post, with signature option, the refusal of the party to accept or pick up the item, does not override the deeming provision. Where the Registered Mail or Express Post, with signature option, is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

#### Issue(s) to be Decided

1. Is the One Month Notice to End Tenancy for Cause valid and enforceable against the tenant? If so, is the Landlord entitled to an Order of Possession?
2. Is the tenant entitled to recover the filing fee for this application?

#### Background and Evidence

The tenancy commenced June 25, 2017 for a fixed term ending June 30, 2018 and continued thereafter on a month to month basis. Rent was \$2250.00 per month and the landlord currently holds a security deposit of \$1125.00 in trust. The tenants also signed an agreement to comply with the strata bylaws at that time.

The One Month Notice was included in the evidence package. The One Month Notice was issued for cause, the landlord stated that the tenants were repeatedly violating the strata bylaws and incurred significant fines which remain outstanding. The tenant did not pick up the One Month Notice sent by registered mail.

#### Analysis

Section 47 of the Act states in part:

**47**(4)A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

The tenant did not file an application for dispute resolution until June 9, 2022. The dispute application was therefore filed out of time.

Section 55 of the Act states:

**55** (1)If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a)the landlord's notice to end tenancy complies with [section 52](#) [*form and content of notice to end tenancy*], and
- (b)the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that the One Month Notice complies with the form and content requirements in Section 52 of the Act and was properly served on the tenants and that the One Month Notice is valid and enforceable. The tenant's application disputing the One Month Notice is therefore dismissed. As the tenancy is ended, the tenant's further application seeking an order requiring the landlord to comply with the Act, regulations or the tenancy agreement is no longer necessary and is therefore dismissed as well.

I find the Landlord is entitled to an order of possession, which will be effective two days after it is served on the Tenant.

As the tenants were unsuccessful in their application, the filing fee for the application will not be returned.

### Conclusion

The Landlord is granted an order of possession which will be effective two days after it is served on the Tenant. The order of possession must be served on the Tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

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: October 28, 2022