



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding UP RITE HOMES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC, FFL

### Introduction

The Application for Dispute Resolution (the Application) was filed by the Landlord under the Residential Tenancy Act (the Act), on October 10, 2022, seeking:

- an Order of Possession for cause; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 11:00 AM on November 21, 2022, and was attended by the Agent for the Landlord (the Agent), who provided affirmed testimony. No one attended on behalf of the Tenant. The Agent was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Agent was advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The Agent was asked to refrain from speaking over me and to hold their questions and responses until it was their opportunity to speak. The Agent was also advised that personal recordings of the proceeding were prohibited under the Rules of Procedure and confirmed that they were not recording the proceedings.

The Rules of Procedure state that the respondent must be served with a copy of the Application, the Notice of Hearing, and any documentary evidence intended to be relied upon at the hearing by the applicant(s). As the Tenant did not attend the hearing, I confirmed service of these documents as explained below.

The Agent testified in the hearing that the Notice of Dispute Resolution Proceeding Package (NODRP), which includes the Application and the Notice of Hearing, was sent to the Tenant by registered mail on October 24, 2022. The Agent provided a copy of the registered mail receipt and the registered mail address sticker with the tracking number affixed, as well as a proof of service document. I note that the address shown on the sticker matches the Tenant's address shown in the tenancy agreement before me. The Agent stated that Canada Post tracking shows that the registered mail was sent on October 24, 2022, that a first notice was left on October 25, 2022, and that a final notice was left on October 30, 2022, before the package was returned to sender on November 15, 2022. Additionally, the Agent stated that they spoke with the Tenant about it. As a result, I find that the Tenant was deemed served on October 29, 2022, pursuant to sections 88(c) and 89(1)(c) of the Act.

Residential Tenancy Branch (Branch) records indicate that the NODRP was sent to the Landlord by email, as per their request, on October 21, 2022. As I am satisfied that the NODRP was mailed to the Tenant on October 24, 2022, I therefore find that the Landlord complied with sections 59(3) of the Act and rule 3.1 of the Rules of Procedure.

I confirmed that the hearing details shown in the NODRP were correct and I note that the Agent had no difficulty attending the hearing on time using this information. Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. Rule 7.3 of the Rules of Procedure states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party. Based on the above and as there was no evidence before me that the parties had agreed to reschedule or adjourn the matter, I commenced the hearing as scheduled, despite the absence of the Tenant or an agent acting on their behalf.

The Agent stated that the documentary evidence before me was personally served on the Tenant on November 3, 2022, at 8:13 PM. The Agent also submitted a witnessed and signed proof of service form in support of this testimony. The Agent stated that when the Tenant was personally served with the documentary evidence, they indicated that they would be able to view the digital evidence and the Agent stated that they spoke with the Tenant on Monday November 14, 2022, at which point the Tenant told them that they were able to view all the digital evidence. As a result, I am satisfied that the Tenant was personally served with the documentary evidence before me on behalf of the Landlord on November 3, 2022, and I therefore accept this documentary evidence for review and consideration.

Although I have reviewed all documentary evidence before me that was accepted for consideration in accordance with the Act and the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the Agent, a copy of the decision and any orders issued in favor of the Landlord will be sent to them by email at the email address listed in the Application and confirmed at the hearing.

#### Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession pursuant to sections 47 and 55 of the *Act*?

Is the Landlord entitled to recovery of the filing fee pursuant to section 72 of the *Act*?

#### Background and Evidence

The tenancy agreement in the documentary evidence before me indicates that the periodic (month-to-month) tenancy began on May 15, 2015.

The Agent testified that a One Month Notice to End Tenancy for Cause (the One Month Notice) was sent to the Tenant by registered mail at the rental unit address on August 24, 2022. A proof of service document was submitted for my review and consideration along with a copy of the registered mail receipt and a copy of the registered mail label addressed to the Tenant at the rental unit address. A tracking confirmation was also submitted showing that the registered mail was delivered on August 30, 2022.

The One Month Notice in the documentary evidence before me, dated August 24, 2022, has an effective date of September 30, 2022, and indicates that the reason for ending the tenancy is because:

- the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;

- the tenant or a person permitted on the property by the tenant has 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 caused or is likely to cause damage to the landlord's property;
- the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant of the residential property; and
- the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord.

In the details of events section of the One Month Notice it states “see attached documentation.” and a one-page type-written document was attached detailing the reasons for issuance of the One Month Notice, including but not limited to guests of the Tenant stealing property belonging to other occupants of the building and guests of the Tenant circumventing door locking mechanisms through various means in what appears to be an attempt to allow unauthorized persons to access the building without a key/fob. At the hearing the Agent stated that the behavior that gave rise to issuance of the One Month Notice has continued with the most recent incident occurring on Sunday November 20, 2022. Significant documentary evidence was submitted on behalf of the landlord in support of the issuance of the One Month Notice including but not limited to copies of complaints received from other occupants of the building and video surveillance footage.

At the hearing, the Agents stated that the Tenant did not dispute the One Month Notice and sought an Order of Possession for the rental unit at the end of November 2022, as rent for use and occupancy has already been paid in full for this month.

Although the teleconference remained open for the 21-minute duration of the hearing, no one attended on behalf of the Tenant to provide any evidence or testimony for consideration.

### Analysis

Section 47 of the Act outlines the grounds on which to issue a notice to end tenancy for cause and that a landlord may end a tenancy by giving notice to end the tenancy if the

tenant or a person permitted on the residential property by the tenant has done any of the things alleged in the One Month Notice.

Section 47(4) of the Act states that 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. Section 47(5) of the Act also states that if a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (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 have reviewed all relevant documentary evidence and oral testimony and in accordance with sections 88 and 90 of the Act, I find that the Tenant was deemed served with the One Month Notice on October 29, 2022, five days after I am satisfied that it was sent to the Tenant at the rental unit address by registered mail. In any event, I am also satisfied that the Tenant received the registered mail on October 30, 2022, based on the registered mail tracking information provided by the Agent.

Section 55(2) of the Act states that a landlord may request an order of possession of a rental unit if 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.

Based on the affirmed testimony of the Agent and as there is no evidence before me to the contrary, I find that the Tenant did not dispute the One Month Notice within the 10-day period provided for under the Act and that the time for doing so has expired. Based on the foregoing, I find that 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 One Month Notice, September 30, 2022, and that the tenancy therefore ended on that date. I therefore find that the Tenant is overholding the rental unit. As a result, and as I find that the One Month Notice complies with the form and content requirements set out under section 52 of the Act, I therefore find that the Landlord is entitled to an Order of Possession pursuant to section 55(2)(b) of the Act.

Section 55(3) of the Act states that the director may grant an Order of Possession before or after the date when the tenant is required to vacate a rental unit and that the order takes effect on that date. As the effective date of the One Month notice has passed, the Tenant has paid use and occupancy rent for the month of November 2022,

and as per the agreement of the Agent at the hearing, the Order of Possession will be effective at 1:00 P.M. on November 30, 2022.

As the Landlord was successful in their Application, I also grant them recovery of the \$100.00 filing fee pursuant to section 72(1) of the Act. Pursuant to section 67 of the Act, I therefore grant the Landlord a Monetary Order in the amount of \$100.00. If a security deposit and/or pet damage deposit were paid by the Tenant and are currently held in trust by the Landlord, the Landlord is permitted to deduct \$100.00 for recovery of the filing fee from the security deposit and/or pet damage deposit, in lieu of serving and enforcing the Monetary Order, should they wish to do so.

### Conclusion

Pursuant to section 55(2)(b) of the Act, I grant an Order of Possession to the Landlord effective at **1:00 P.M. on November 30, 2022, 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 67 of the Act, I grant the Landlord a Monetary Order in the amount of **\$100.00**. 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 Small Claims Division of the Provincial Court and enforced as an Order of that Court. In lieu of serving and enforcing the Monetary Order, the Landlord is entitled to withhold \$100.00 from any security deposit and/or pet damage deposit paid by the Tenant and held in trust by the Landlord, should they wish to do so.

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the Act.

Dated: November 21, 2022

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Residential Tenancy Branch