



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPC MNRL FFL

### Introduction

This hearing dealt with a landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) to obtain an order of possession based on an undisputed 1 Month Notice to End Tenancy for Cause dated June 3, 2022 (1 Month Notice), for a monetary order of \$1,600 for unpaid rent and to recover the cost of the filing fee.

An agent for the landlord, GC (agent) attended the teleconference hearing and gave affirmed testimony. During the hearing the agent was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing. The agent was also provided an opportunity to ask questions during the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated July 8, 2022 (Notice of Hearing), application and documentary evidence (Hearing Package) were considered. The agent testified that the Hearing Package was served on the tenant by registered mail on July 11, 2022. The Canada Post tracking number has been included on the cover page of this Decision for ease of reference and marked as "1". According to the Canada Post registered mail tracking website, the registered mail was marked as "unclaimed" and was returned to the sender. Section 90 of the Act states that documents served by registered mail are deemed served 5 days after they are mailed. Therefore, based on the evidence before me, I find the tenant was deemed served as of July 16, 2022 with the Hearing Package.

In addition, the agent testified that a second evidence package was served on the tenant by registered mail on October 7, 2022. The Canada Post tracking number has been included on the cover page of this Decision for ease of reference and marked as

“2”. According to the Canada Post registered mail tracking website, the registered mail was also marked as “unclaimed” and was returned to the sender. Therefore, based on the evidence before me, I find the tenant was deemed served as of October 12, 2022 with the second evidence package.

### Preliminary and Procedural Matters

The agent testified that since filing their application, the tenant has also failed to pay rent for the months of July, August, September, October and November 2022 and continues to occupy the rental unit. As a result, the agent requested to amend the application to include rent owed for those months. I find that this request to amend the application does not prejudice the respondent tenant as the tenant would be aware or ought to be aware that rent is due pursuant to the tenancy agreement. Therefore, I amend the application from \$1,600 to \$4,100.00, which consists of \$500 in unpaid rent between April 2022 and November 2022 inclusive, pursuant to section 64(3) of the Act.

The agent confirmed their email address during the hearing. They also confirmed that they are not aware of the tenant’s email address. The agent was advised that the Decision and any related orders will be emailed to the landlord. The Decision will be sent by regular mail to the tenant.

### Issues to be Decided

- Is the landlord entitled to an order of possession based on an undisputed 1 Month Notice?
- Is the landlord entitled to a monetary order for unpaid rent or loss of rent under the Act?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

### Background and Evidence

The agent confirmed there was no tenancy agreement. The agent testified that the tenancy began on March 3, 2016. Monthly rent has always been \$500 per month and due on the first day of each month. The agent testified that the tenant did not pay a security deposit or a pet damage deposit.

The agent stated that the 1 Month Notice was served by registered mail on June 3, 2022. The Canada Post tracking number has been included on the cover page of this Decision for ease of reference and marked as “3”. According to the Canada Post

registered mail tracking website, the registered mail was also marked as “unclaimed” and was returned to the sender. Therefore, based on the evidence before me, I find the tenant was deemed served as of June 8, 2022 with the 1 Month Notice.

The 1 Month Notice included an effective vacancy date of August 1, 2022, and indicated two causes on page two of the 1 Month Notice as follows:

☐ Tenant is repeatedly late paying rent  
☐ Tenant or a person permitted on the property by the tenant has (check all boxes that apply):  
☒ significantly interfered with or unreasonably disturbed another occupant or the landlord.  
☒ seriously jeopardized the health or safety or lawful right of another occupant or the landlord.  
☐ put the landlord's property at significant risk  
☐ [unclear] to the employee to occupy during the term of emp

The agent affirmed that the tenant did not dispute the 1 Month Notice and failed to vacate the rental unit by August 1, 2022 or any day since that date. The agent stated that the landlord is seeking an order of possession as the tenant continues to occupy the rental unit and that the landlord has suffered a loss of rent since April 2022 to November 2022, inclusive.

The details of cause portion of the 1 Month Notice states the following:

to a new caretaker, manager or superintendent.  
**Details of Cause(s): Describe what, where and who caused the issue and include dates/times, names etc. This information is required. An arbitrator may cancel the notice if details are not provided.**  
**Details of the Event(s):**  
Tenant has threatened the owner and other occupants and refused to give compensation to the owner.

The agent clarified that the “refused to give compensation to the owner” wording referred to above relates to unpaid rent.

### Analysis

Based on the undisputed documentary evidence of the landlord and undisputed testimony provided by the agent during the hearing, and on the balance of probabilities, I find the following.

**Order of possession** – Section 47 of the Act states that if the tenant once served with the 1 Month Notice does not dispute the 1 Month Notice within 10 days of receiving the 1 Month Notice, the tenant is conclusively presumed to have accepted the 1 Month Notice and must vacate the rental unit on the effective vacancy. In the matter before

me, the tenant did not dispute the 1 Month Notice and as a result, I find the tenancy ended on the effective vacancy date, which was August 1, 2022.

As the tenant continues to occupy the rental unit, I find the tenant is overholding the rental unit. Therefore, pursuant to section 55 of the Act, I grant the landlord an order of possession effective **two (2) days** after service on the tenant. I have reviewed the 1 Month Notice and find that it complies with section 52 of the Act. I also note that the reason stated on the 1 Month Notice is valid as the tenant has refused to pay the tenant rent between April 2022 and November 2022, inclusive.

**Monetary order** – Section 26 of the Act applies and states that a tenant is responsible to pay the rent in accordance with the tenancy agreement on the date that it is due. In the matter before me, the \$500 monthly rent was due on the first day of each month. I find the tenant breached section 26 of the Act by failing to pay the rent as claimed by the landlord. Therefore, pursuant to section 67 of the Act, I find the landlord has met the burden of proof and that the tenant owes **\$4,000 in unpaid rent and loss of rent**. I note that the tenant has not vacated the rental unit.

In addition, as the landlord's application was successful and pursuant to section 72 of the Act, I grant the landlord **\$100** for the recovery of the cost of the filing fee under the Act. Given the above, I find the landlord's total monetary claim is **\$4,100** comprised of unpaid rent, loss of rent and the filing fee as described above.

I grant the landlord a monetary order pursuant to section 67 of the Act in the amount of **\$4,100**.

### Conclusion

The landlord's application is fully successful. The tenancy ended August 1, 2022. The tenant has been overholding the rental unit since that date.

The landlord is granted an order of possession effective two (2) days after service on the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia. The tenant is cautioned that if they fail to vacate the rental unit, they could be held liable for all enforcement costs, including court and bailiff fees.

The landlord is granted a monetary order of \$4,100 comprised of unpaid rent, loss of rent and the filing fee. This order must be served on the tenant by the landlord and may

be enforced in the Provincial Court (Small Claims). The tenant is also cautioned that if they fail to pay the monetary order, they could be held liable for all enforcement costs, including court fees.

The Decision and orders will be emailed to the landlord. The decision will be sent by regular mail to the tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: November 4, 2022

---

Residential Tenancy Branch