



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **OPC, MNDL-S, MNDCL-S, FFL, CNC, OLC, FFT**

### Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows

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The Landlord applied as follows:

- for an order of possession pursuant to section 55
- for an order requiring the tenants to pay for damage pursuant to section 67
- for a monetary order for compensation pursuant to section 67
- for reimbursement of the filing fee pursuant to section 72

The Tenant applied as follows:

- for cancellation of the landlords’ 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
- for reimbursement of the filing fee pursuant to section 72

Both parties attended the hearing with the landlord, WW and the tenant, AG appearing for themselves. 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 tenant confirmed receipt of the One Month Notice to End Tenancy ("One Month Notice") dated June 30, 2022. Pursuant to section 89 of the Act the tenant is found to have been served in accordance with the Act. The parties each testified that they received the respective materials and based on their testimonies I find each party was served in accordance with sections 88 and 89 of the *Act*.

### Preliminary Issue

Both parties have applied for dispute resolution on a number of issues. Pursuant to Rule 2.3 of the Rules of Procedure I am severing all issues not related to the One Month Notice and recovery of the filing fee.

### 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 either party entitled to a reimbursement for their respective filing fees?

### Background and Evidence

The tenancy commenced on November 1, 2021, on a month-to-month basis. There is no written tenancy agreement. Rent is \$3,800.00 per month and a \$1,900.00 security deposit was paid and is held in trust by the landlord.

The tenant moved out of the residence in April 2022 and sublet the property to other tenants. There are two separate suites in the rental unit and the tenant sublet both suites. The landlord and tenant agreed that the landlord did not give written permission for the tenant to sublet the rental unit and no written notice was provided in evidence.

The tenant testified in the hearing that he received the One Month Notice from the landlord on July 1, 2022. He did not apply for dispute resolution until September 14, 2022.

### Analysis

Under section 47(4) the tenant had 10 days to dispute the One Month Notice. He is therefore out of time to dispute the One Month Notice and he did not make an application for more time to dispute the One Month Notice.

Section 47(5) states:

(5) 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

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit by that date.

Applying the conclusive presumption, the tenancy has ended. The landlord has made an application for an order of possession of the rental unit based on the One Month Notice.

Section 55 of the Act states in part:

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;

As the tenant did not dispute the One Month Notice in time, and the landlord has requested an order of possession, the landlord is therefore entitled to an order of possession for the rental unit. 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 landlord was successful in his application, he is also entitled to recover the filing fee for his application. Using the offsetting provisions contained in section 72 of the *Act*, I allow the landlord to retain \$100.00 from the tenant's security deposit in full satisfaction for a return of the filing fee.

### 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. The landlord is entitled to recover the filing fee and is permitted to deduct \$100.00 from the tenant's security deposit.

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: November 09, 2022

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Residential Tenancy Branch