



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding DEVON PROPERTIES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **OPC, FFL**

### **Introduction**

This hearing dealt with the Landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. An Order of Possession for a One Month Notice to End Tenancy For Cause (the "One Month Notice") pursuant to Sections 47, 55 and 62 of the Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's Property Manager, Leasing Specialist, and the Tenants attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlord served the Tenants with the One Month Notice by Canada Post registered mail on May 31, 2022. The Landlord referred me to the Canada Post registered mail tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Tenants confirmed receipt of the One Month Notice. I find that the One Month Notice was deemed served on the Tenants on June 5, 2022 pursuant to Sections 88(c) and 90(a) of the Act.

The Landlord testified that they served the Tenants with the Notice of Dispute Resolution Proceeding package on September 8, 2022 by Canada Post registered mail

(the “NoDRP package”). The Landlord referred me to the Canada Post registered mail receipt with tracking numbers submitted into documentary evidence as proof of service. I noted the registered mail tracking numbers on the cover sheet of this decision. The Tenants confirm receipt of both packages. I find that the Tenants were deemed served with the NoDRP package five days after mailing them on September 13, 2022 in accordance with Sections 89(1)(c) and 90(a) of the Act.

### Issues to be Decided

1. Is the Landlord entitled to an Order of Possession for the One Month Notice?
2. Is the Landlord entitled to recovery of the application filing fee?

### Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on November 1, 2016. The fixed term ended on October 31, 2017, then the tenancy continued on a month-to-month basis. Monthly rent is \$1,033.34 payable on the first day of each month. A security deposit of \$437.50 was collected at the start of the tenancy and is still held by the Landlord. The Tenants testified that they paid a \$432.50 pet damage deposit at the beginning of their tenancy. The Landlord stated they have no record of a pet damage deposit being paid at the beginning of the tenancy.

The One Month Notice stated the reason the Landlord was ending the tenancy was because the Tenants have failed to comply with a material term of the tenancy agreement, and have not corrected the situation within a reasonable time after the landlord gives written notice to do so. The effective date of the One Month Notice was July 31, 2022.

The Landlord provided further details of the causes to end this tenancy as:

*After a long history of doing so, with caution notices provided, the tenant continues to leave yard and vehicle maintenance equipment, as well as uninsured/unlicensed vehicles/trailers and other items on the common property and in parking stalls. On May5, 2022, a letter was provided to the*

*tenant, giving reasonable notice to remove such items. After the three week deadline of May 26, 2022, there were still numerous items left on the property by the tenant, including an uninsured truck, a hydraulic jack, a pylon, concrete blocks, a lawnmower, vehicle leaf springs, garbage bins, and an uninsured/unlicensed trailer filled with garden equipment and an old mattress. Section 20 of the tenancy agreement includes:*

**STORAGE:**

*“All property of the tenant kept on the residential property must be kept in safe condition in proper storage areas...”*

**VEHICLES:**

*“...vehicles may be parked, but not stored on the residential property [...] must be in operating condition, currently licensed, and insured for on-road operation...”*

The Landlord testified that the Tenants, over the years, have shown that they cannot clean up items left around their parking stall area, and have left items in front of the vehicle and along the side of the building. The Landlord pointed out in previous years, the Tenants' balcony was packed with a multitude of items, including a large patio umbrella. The Landlord uploaded pictures of items left around the male Tenant's work truck, and around a trailer which the Landlord said was unlicensed. The Landlord said the Tenants have been issued caution notices before for these matters, and these caution notices were uploaded in documentary evidence.

The Landlord wrote the Tenants a breach of material term letter on May 5, 2022. In the letter, it notifies the Tenants that there is a problem with various items being left in the parking stalls outside the Tenants' rental unit. The Landlord notes it is a breach of Sections 20 and 25 of the tenancy agreement, and they provided a deadline date for clean-up being May 26, 2022. On May 27, 2022, because the area was not tidied up, the Landlord issued the One Month Notice.

The Landlord stated by the Tenants not abiding by Sections 20 and 25 of the tenancy agreement, it negatively affects the enjoyment of other tenants' residency on the residential property. The Landlord further stated that the items left around the property poses danger for the children who play in and around the residential property. The Landlord also noted that they have lost prospective tenants who commented on the

items left around, then later did not enter tenancy agreements for rental units on the property.

The Tenants did not dispute the One Month Notice. The male Tenant stated that he did not have the \$100.00 to pay for dispute resolution at the time they were served with the One Month Notice. The Tenant testified that not all the items left were his, and other items or vehicles were dumped, moved or sold after the Landlord took pictures of them.

The male Tenant is a landscaper and used to work for the property management company before being let go. The Tenant also does clean-up and dump runs for other people, and somedays at the end of his day, he would park his full truck in his parking stall, and finish the job the next day.

The Landlord seeks an Order of Possession.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 47(4) of the Act provides that upon receipt of a One Month Notice to end tenancy for cause, a tenant may, within 10 days, dispute the notice by filing an application for dispute resolution with the RTB. The Tenants confirmed receipt of the One Month Notice and were deemed served on June 5, 2022. Ten days after receipt of the notice was June 15, 2022, when a dispute resolution application was due.

The Tenant claimed that he did not have the \$100.00 to apply for dispute resolution. The RTB provides parties with very low incomes or who have extraordinary expenses that would make paying the application filing fee a hardship, can apply to have the fee waived. The Tenant did not submit a proof of income for a fee waiver. The Tenants did not apply for dispute resolution. I find that the Tenants have failed to file an application for dispute resolution within the 10 days after receipt of the One Month Notice.

Accordingly, I find that the Tenants are conclusively presumed under Section 47(5)(a) of the Act to have accepted that the tenancy ended on the effective date of the notice, in this case, July 31, 2022. I uphold the Landlord's One Month Notice.

I must now consider if the Landlord is entitled to an Order of Possession. Section 55 of the Act reads as follows:

***Order of possession for the landlord***

**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;*

...

(4) *In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 [Resolving Disputes],*

(a) *grant an order of possession, and*

...

I find that the One Month Notice submitted into documentary evidence complies with the form and content requirements of Section 52 of the Act. I previously found that the Tenant did not apply to dispute the One Month Notice, and now the time for making that application has expired. Pursuant to Section 55(4)(a) of the Act, I find the Landlord is entitled to an Order of Possession. As the Tenants still reside in the rental unit, I find the tenancy end date will be January 31, 2023, pursuant to Section 68(2)(a) of the Act. I grant an Order of Possession effective on January 31, 2023 at 1:00 p.m.

In addition, having been successful, I find the Landlord is entitled to recover the application filing fee paid to start this application, which I order may be deducted from the security deposit held pursuant to Section 72(2)(b) of the Act.

Conclusion

The Landlord is granted an Order of Possession which will be effective on January 31, 2023 at 1:00 p.m. The Landlord must serve this Order on the Tenants as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The Landlord may deduct the \$100.00 application filing fee from the security deposit due to the Tenants.

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

Dated: December 30, 2022

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Residential Tenancy Branch