



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding JABS CONSTRUCTION LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC, FFL

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on July 29, 2022 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession based on a One Month Notice for Cause dated July 7, 2022 (the "One Month Notice") and;
- an order granting recovery of the filing fee.

The Landlord's Agents C.F., P.E., and the Tenants attended the hearing at the appointed date and time. At the start of the hearing, the Landlord's Agents testified that the Application and documentary evidence package was served to each Tenant by Canada Post registered mail on August 16, 2022. The Landlord submitted a copy of the envelopes and registered mail tracking information confirming both mailings.

The Tenants responded by confirming that they had received notification from Canada Post that there were items waiting for them at the nearest Canada Post Office. The Tenants stated that they did not collect the mailings as they were not anticipating any deliveries. The Tenant J.A. stated that her name was spelled incorrectly. Tenant J.K. stated that he was away for work at the time of the mailing. Both Tenants confirmed that they were notified by Canada Post regarding the items waiting to be picked up by the Tenants. Both Tenants confirmed that they made no efforts to retrieve the mailings.

The Tenants also mentioned that the Landlord had other ways they could have served these documents and that they were not anticipating registered mail documents from the Landlord. I note that Section 89 of the Act establishes the following Special rules for certain documents, which include an application for dispute resolution: An application

for dispute resolution,...when required to be given to one party by another, must be given in one of the following ways:

- (a) *by leaving a copy with the person;*
- (b) *if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) ***by sending a copy by 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;*
- (d) *if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;*
- (e) *as ordered by the director under section 71(1) [director's orders: delivery and service of document]...*

According to Section 90 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;**

(b)if given or served by fax, on the third day after it is faxed;

(c)if given or served by attaching a copy of the document to a door or other place, on the third day after it is attached;

(d)if given or served by leaving a copy of the document in a mailbox or mail slot, on the third day after it is left.

As such, I find that the Landlord has abided by Section 89 by serving the Tenants by registered mail. I find that the Tenants cannot avoid service and had the opportunity to collect the mailings, however, chose not to. Lastly, I accept that the Landlord made a small clerical error by misspelling the Tenant J.A's last name, however, I find that each Tenant was served with the documents, and that the dispute address was correct on the envelopes. I find that the misspelling does not invalidate the Application or mailings. Based on the oral and written submissions of the parties, and in accordance with section 90 of the *Act*, I find that the Tenants are deemed to have been served with the Application and documentary evidence five days later, on August 21, 2022.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However,

only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Landlord entitled to an order of possession based on a One Month Notice for Cause, pursuant to Section 47 and 55 of the *Act*?
2. Is the Landlord entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; Tenant J.K. began his tenancy on May 31, 2018, while Tenant J.A. joined the tenancy on November 1, 2020. Currently, the Tenants are required to pay rent and laundry fee in the amount of \$1,329.00 which is due on the first day of each month. The Tenants paid a security deposit in the amount of \$555.00 which the Landlord continues to hold. The Tenants continue to occupy the rental unit.

The Landlord's Agents stated that the Tenants have significantly interfered with and unreasonably disturbed the Landlord on June 22, 2022 during which the Tenant called the Landlord 10 times in 5 minutes. The Landlord's Agents stated that J.K. yelled profanities at the Landlord during these phone calls. Furthermore, the Landlord's Agents stated that the Tenant J.K. proceeded to call the City to have the water turned off to the rental property. The Landlord's Agents stated that there were several other documented incidents for which the Tenants had received written warnings about interfering with the Landlord. The Landlord's Agents stated that the Tenant J.K. dumped garbage on the Landlord's Agent's car. The Landlord's Agent stated that the Tenant use profanity and threatened a plumber who was attempting to repair a leak in the rental unit.

The Landlord's Agent stated that they subsequently served the Tenants with a One Month Notice for Cause dated July 7, 2022 with an effective vacancy date of August 31, 2022 by registered mail on July 7, 2022. The Landlord provided a copy of the One Month Notice, supporting warning letters to the Tenants and also the registered mail tracking information in support of serving the One Month Notice to the Tenants. The Landlord's reason for ending the tenancy on the One Month Notice is;

*“Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.”*

The Landlord’s Agents stated that the registered mail was returned to them as unclaimed on August 4, 2022. The Tenants once again acknowledged that they were notified that there was registered mail waiting for them at the nearest Canada Post Office. The Tenants stated that chose not to collect the registered mailing as they thought it could have been a hoax, they were not anticipating mail, J.A.’s name was spelled incorrectly, and Tenant J.K. was at work. As such, the Tenants stated that they did not receive the One Month Notice from the Landlord. During the hearing, the Tenants disputed the Landlord’s reasons for ending the tenancy.

### Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

According to Section 47 (1) of the Act, a landlord may end a tenancy by giving notice to end the tenancy for cause.

The Landlord served the Tenants with the One Month on July 7, 2022, by registered mail. Based on the oral and written submissions of the Landlord, and in accordance with sections 88 and 90 of the Act, I find that the Tenants are deemed to have been served with the One Month Notice on July 12, 2022, the fifth day after the registered mailing.

Section 47(4) of the Act states that a Tenant may dispute a Notice by making an Application for Dispute Resolution within 10 days after the date the Tenant receives the Notice. Section 47(5) of the Act states that if a Tenant who has received a Notice 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.

As I have found that the Notice was deemed served to the Tenants on July 12, 2022 and that there is no evidence before me that the Tenants applied for Dispute Resolution within 10 days or applied for more time to cancel the Notice, I find that the Tenants are conclusively presumed to have accepted the end of her tenancy on August 31 ,2022.

I further find that the Landlord has provided sufficient evidence to demonstrate that the Tenants have significantly interfered with and unreasonably disturbed the Landlord. I

find that the One Month Notice complies with the requirements of Section 52 of the *Act* for form and content. I find that the Landlord is entitled to an **Order of Possession effective at 1:00PM on December 31, 2022**, which must be served on the Tenants. If the Tenants do not vacate the rental unit, the Landlord may enforce this Order in the Supreme Court of British Columbia.

As the Landlord was successful with the Application seeking an order of possession for cause, I find the Landlord is entitled to recover the **\$100.00** filing fee paid to make the Application which they may deduct from the Tenants' security deposit.

### Conclusion

The Tenants are conclusively presumed to have accepted the end of the tenancy for cause. Pursuant to Section 55 of the *Act*, I grant the Landlord an Order of Possession to be effective at 1:00PM on December 31, 2022 after notice is served on the Tenants. 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.

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: December 19, 2022

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Residential Tenancy Branch