



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 0727570 BC LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC, FFL

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- an order of possession under a One Month Notice to End Tenancy for Cause (the Notice), pursuant to sections 47 and 55; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 1:40 P.M. to enable the tenant to call into this teleconference hearing scheduled for 1:30 P.M. The tenant did not attend the hearing. The landlord, represented by agent GS (the landlord), attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

I accept the landlord's testimony that the tenant was served with the application and evidence (the materials) by registered mail on November 22, 2022 and a second package of evidence on December 30, 2022, in accordance with section 89(2)(b) of the Act (the tracking numbers are recorded on the cover of this decision).

Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5<sup>th</sup> day after it is mailed. Given the evidence of registered mail the tenant is deemed to have received the materials on November 27, 2022 and the second package of evidence on January 04, 2023, in accordance with section 90 (a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

### Issues to be Decided

Is the landlord entitled to:

1. an order of possession based on the Notice?
2. an authorization to recover the filing fee?

### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is the landlord's obligation to present the evidence to substantiate the application.

The landlord affirmed the tenancy started on December 01, 2020. Monthly rent is \$4,853.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$2,000.00 was collected and the landlord holds it in trust. The tenancy agreement was submitted into evidence.

The landlord stated he mailed the Notice to the rental via registered mail on October 19, 2022. The tracking number is recorded on the cover page of this decision. The landlord testified the tenant did not dispute the Notice and continues to occupy the rental unit.

The landlord submitted a copy of the October 18, 2022 Notice into evidence. The effective date is November 30, 2022. The reasons to end the tenancy are:

- The tenant is repeatedly late paying rent.
- The tenant or a person permitted on the property by the tenant has
  - Put the landlord's property at significant risk.

The details of the events are:

- 1/ Tenant has repeatedly been late with payment of rent causing financial hardship to the landlord
- 2/ Tenant has repeatedly subleased the property using the air b n b platform or others.

The landlord affirmed the tenant did not dispute the Notice and continues to occupy the rental unit.

### Analysis

Based on the undisputed landlord's testimony, I find the landlord mailed the Notice on October 19, 2022, in accordance with section 88(c) of the Act. The the tenant is deemed served the Notice on October 24, 2022, in accordance with section 90(a) of the Act.

I find the form and content of the Notice is valid pursuant to section 52 of the Act, as the Notice is signed and dated by the landlord, gives the address of the rental unit, states the effective date of the Notice, states the grounds for ending the tenancy and it is in the approved form.

Section 47(5) of the Act 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.

Section 47(5) of the Act is mandatory, and I do not have discretion as to its application. Therefore, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice and must move out of the rental property.

As the tenant is occupying the rental unit and the effective date of the Notice is November 30, 2022, I find that the landlord is entitled to an order of possession effective two days after service, pursuant to section 55(2)(b) of the Act.

I warn the tenant that he may be liable for any costs the landlord incurs to enforce the order of possession.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee.

Conclusion

I grant an order of possession to the landlord effective **two days after service of this order** on the tenant. Should the tenant fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

Pursuant to section 72(2)(b), the landlord is authorized to deduct \$100.00 from the security deposit to recover the filing fee.

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: January 20, 2023

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Residential Tenancy Branch