



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding REALSTAR MANAGEMENT HORIZON  
TOWERS and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC, MNDCL-S, FFL

### Introduction

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

- an Order of Possession under a One Month Notice to End Tenancy for Cause dated August 9, 2022 (the "One Month Notice"), pursuant to section 55;
- a Monetary Order of \$178.50 as compensation for monetary loss or other money owed pursuant to section 67;
- authorization to retain the security and/or pet damage deposit pursuant to section 72(2)(b); and
- authorization to recover the filing fee for this application from the Tenant pursuant to section 72.

The Landlord's agent NW attended this hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The Tenant did not attend this hearing. I left the teleconference hearing connection open until 11:25 am in order to enable the Tenant to call into the hearing scheduled to start at 11:00 am. I confirmed that the correct call-in numbers and participant access code had been provided in the notice of dispute resolution proceeding. I used the teleconference system to confirm that NW and I were the only ones who had called into the hearing.

I informed NW that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Service of Dispute Resolution Documents

NW confirmed that the notice of dispute resolution proceeding packages and Landlord's evidence (collectively, the "NDRP Package") were sent to the Tenant via email on September 15, 2022. NW testified that the Tenant had agreed to accept service via email in the tenancy agreement. I have reviewed a copy of the tenancy agreement and find clause 49 to state that the Tenant provides his email address (referenced on the cover page of this decision) as an address for communication and "for service of documents".

Based on the foregoing, I find the Tenant was served with the NDRP Package in accordance with sections 88 and 89 of the Act, as well as section 43 of the regulations. Pursuant to section 44 of the regulations, I find the Tenant is deemed to have received the NDRP Package three days after emailing, or on September 18, 2022.

Having found the Tenant to be deemed served with notice of this hearing, I directed that this hearing continue in the absence of the Tenant.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to compensation of \$178.50 for monetary loss or other money owed?
3. Is the Landlord entitled to recover the filing fee and retain the security deposit?

Background and Evidence

This tenancy commenced on June 1, 2021 and was month-to-month. Rent was \$2,024.90 per month due on the first day of each month. The Tenant paid a security deposit of \$997.50.

The Landlord submitted a copy of the One Month Notice into evidence. It is signed by NW on behalf of the Landlord and has an effective date of September 30, 2022. The One Month Notice states that the Tenant or a person permitted on the property by the Tenant has seriously jeopardized the health or safety or lawful right of another occupant or the Landlord. The details of cause stated on the One Month Notice are as follows:

*The tenant has repeatedly changed his suite door lock & has attached a locking mechanism, to the inside of his suite door, preventing access to Landlord, Latest attempt with Notice to Enter given was made on Aug. 8/22. Landlord was not able to enter suite. Resident is in violation of s. 14 & 15 of the Residential Tenancy Act.*

NW confirmed that a copy of the One Month Notice was sent to the Tenant via email on August 9, 2022.

NW testified that the Tenant may have abandoned the rental unit but there is still furniture and rotten food inside. NW testified that the Tenant has not responded to any emails or phone calls.

NW testified that the Tenant had changed the locks to the rental unit at least three times. NW stated that the last time the Tenant changed the locks was in April 2022. NW referred to a \$178.50 invoice from a locksmith hired by the Landlord dated April 1, 2022. NW also referred to a photograph showing that the locking mechanism had been tampered by the Tenant.

### Analysis

#### *1. Is the Landlord entitled to an Order of Possession?*

Section 47 of the Act permits a landlord to end a tenancy for cause by issuing a one month notice to the tenant. Section 47(1) provides a list of grounds which may constitute cause under this section.

47(3) of the Act requires that a notice to end tenancy for cause comply with section 52 of the Act, which states:

#### **Form and content of notice to end tenancy**

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45(1) or (2) [tenant's notice], state the grounds for ending the tenancy,

(d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and  
(e) when given by a landlord, be in the approved form.

In this case, I have reviewed the One Month Notice and find that it complies with the requirements of section 52 in form and content. I note the One Month Notice states a shortened version of the Landlord's name, but I find that this would have been understood by the Tenant and does not affect the validity of the One Month Notice. I find that the ground for ending the tenancy stated in the One Month Notice corresponds to the cause described in section 47(1)(d)(ii) of the Act.

I accept the Landlord's evidence that a copy of the One Month Notice was emailed to the Tenant at his email address for service on August 9, 2022, in accordance with section 88(j) of the Act and section 43(1) of the regulations. I find that pursuant to section 44 of the regulations, the Tenant is deemed to have received the One Month Notice on August 12, 2022.

Section 47(4) of the Act permits a tenant to dispute a one month notice to end tenancy for cause within 10 days after receiving such notice. Therefore, the Tenant had until August 22, 2022 to dispute the One Month Notice. In this case, the Tenant did not apply to dispute the One Month Notice by August 22, 2022 or at all.

Section 47(5) of the Act states that if a tenant who has received a notice under section 47 does not make an application for dispute resolution in accordance with section 47(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.

Furthermore, sections 55(2)(b) and 55(4) of the Act state 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

(b) if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.

In this case, I have found the One Month Notice was deemed served on August 12, 2022, the time for disputing the One Month Notice expired on August 22, 2022, and the Tenant did not make an application for dispute resolution. Accordingly, I conclude that the Landlord is entitled to an Order of Possession pursuant to sections 55(2)(b) and 55(4)(a) of the Act.

As the effective date stated on the One Month Notice, or September 30, 2022, has already passed, I grant an Order of Possession to the Landlord effective two (2) days after service of the Order upon the Tenant.

*2. Is the Landlord entitled to compensation of \$178.50 for monetary loss or other money owed?*

Section 31(3) of the Act states that a tenant must not change a lock or other means that gives access to his or her rental unit unless the landlord agrees in writing to, or the director has ordered, the change.

Section 67 of the Act states:

**Director's orders: compensation for damage or loss**

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Based on the Landlord's undisputed evidence, I am satisfied that the Tenant changed the locks to the rental unit without the Landlord's permission and without an order of the director, contrary to section 31(3) of the Act. I am further satisfied that the Landlord incurred costs of \$178.50 to change the locks back.

Pursuant to section 67 of the Act, I order the Tenant to pay the Landlord \$178.50.

*3. Is the Landlord entitled to recover the filing fee and retain the security deposit?*

The Landlord has been successful in this application. I grant the Landlord recovery of its filing fee under section 72(1) of the Act.

Pursuant to section 72(2)(b) of the Act, I authorize the Landlord to retain \$278.50 of the Tenant's security deposit for the total awarded in this decision as follows:

Item	Amount
Lock Replacement	\$178.50
Filing Fee	\$100.00
<b>Total Amount Awarded</b>	<b>\$278.50</b>

Conclusion

The Landlord is successful in this application.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **two (2) days** after service upon the Tenant. The Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlord is authorized to retain **\$278.50** of the Tenant's security deposit under section 72(2)(b) of the Act. The balance of the Tenant's security deposit must be dealt in accordance with the Act, the regulations, and the tenancy agreement.

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