



# 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 an application filed by the landlord pursuant the *Residential Tenancy Act* (the “Act”) for:

- An order of possession for cause pursuant to sections 47 and 55; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 9:40 a.m. to enable the tenants to call into this teleconference hearing scheduled for 9:30 a.m. 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.

The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified that the tenants were served with the Notice of Dispute Resolution Hearing packages via registered mail to their residential address on September 27, 2022. Tracking numbers for the mailings are recorded on the cover page of this decision. The tenants are deemed served with the Notices of Dispute Resolution Hearing on October 2, 2022 in accordance with sections 89 and 90 of the Act.

### **Preliminary Issue**

The landlord testified that the third person named on their application for dispute resolution, ZL, is not a tenant, but an occupant of the rental unit. As this person is not a tenant, I have removed ZL as a party to this application in accordance with section 64(3) of the Act, as occupants have no rights or obligations under the tenancy agreement.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Can the landlord recover the filing fee?

Background and Evidence

The landlord gave the following undisputed testimony. The tenancy began with a previous landlord on August 1, 2020. At the commencement of the tenancy, a security deposit of \$700.00 and a pet damage deposit of \$700.00 was collected. The rent is currently \$1,421.00 per month.

On August 1, 2021, the current landlord took over property management. Since taking over, the tenants have been consistently late in paying rent. On July 11, 2022, the landlord served the tenants with a 1 Month Notice to End Tenancy for Cause by posting a copy of it to the tenants' door. A signed, witnessed proof of service document was filed together with a copy of the notice to end tenancy.

The landlord testified that, to the best of his knowledge, the tenants have not filed an application to dispute the notice to end tenancy.

Analysis

I deem the tenants served with the 1 Month Notice to End Tenancy for Cause on July 14, 2022, the third day after it was posted to their door in accordance with sections 88 and 90 of the Act.

Sections 47(4) and (5) of the Act state:

(4) A tenant may dispute a Notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the Notice.

(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.

Based on the landlord's testimony and the Notice before me, I find that the tenants were served with an effective Notice that complies with the form and content requirements as required under section 52 of the Act. Although the tenants had the opportunity to do

so, they did not file an application to dispute the Notice within 10 days or attend this scheduled hearing. The tenants are therefore conclusively presumed to have accepted that the tenancy ends on August 31, 2022 the effective date of the Notice and must move out of the unit.

Pursuant to section 55(2)(b), I grant the landlord an Order of Possession effective 2 days after service upon the tenants.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application. In accordance with the offsetting provision of section 72 of the Act, the landlord may retain \$100.00 of the tenants' security deposit in full satisfaction of the award.

#### Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced in 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: January 31, 2023

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Residential Tenancy Branch