



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, LRE, OLC, FFT  
                             OPC, FFL

### Introduction

This was a cross application hearing that dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the One Month Notice to End Tenancy, pursuant to section 47;
- an Order to restrict or suspend the landlord's right to enter, pursuant to section 70;
- an Order for the landlord to comply with the *Act*, regulation, and/or the tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

This hearing also dealt with the landlord's application pursuant to 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 for this application from the tenant, pursuant to section 72.

The tenant, landlord property manager W.L. ("W.L."), landlord property manager M.Y. ("M.Y.") and the landlord's daughter attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

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

Both parties confirmed their email addresses for service of this Decision.

Preliminary Issue- Service

The tenant testified that he served the landlord with his application for dispute resolution and evidence via regular mail on an S.D. card. The tenant testified that he served the landlord on the last day her was permitted to but could not specifically recall the date. No proof of service documents were entered into evidence. Agent M.Y. testified that the landlord did not receive the tenant's application for dispute resolution or evidence. The tenant did not upload any evidence to the residential tenancy branch for consideration.

Rule 3.1 of the Residential Tenancy Branch Rules of Procedure (the "Rules") states:

The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
- b) the Respondent Instructions for Dispute Resolution;
- c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and
- d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution].

Rule 3.5 of the Rules states:

At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

Section 89(1) of the *Act* states that an application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, 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 documents*].

I find that the applicant did not serve the respondent with her application for dispute resolution in a manner required under section 89 of the *Act* because regular mail is not an authorized method of service. In addition, I find that the tenant has not proved that his application for dispute resolution and evidence were served at all as no proof of service documents for same were entered into evidence and M.Y. testified that the tenant's application for dispute resolution and evidence were not received. I dismiss the tenant's application for dispute resolution with leave to reapply for failure to prove service and failure to serve in accordance with section 89 of the *Act*.

I find that since the tenant's application was dismissed, the tenant is not entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

M.Y. testified that the tenant was served with the landlord's application for dispute resolution and evidence via registered mail on November 18, 2022 and additional evidence via registered mail on January 18, 2023. The tenant confirmed receipt of the above documents via registered mail. I find that the landlord's application for dispute resolution and evidence were served on the tenant in accordance with section 88 and 89 of the *Act*.

#### Preliminary Issue- Amendment

The parties' applications for dispute resolution spell the landlord's name differently. In the hearing the landlord's daughter testified to the correct spelling of the landlord's name. In the hearing I amended both applications for dispute resolution to correctly

spell the landlord's name, in accordance with section 64 of the *Act*. Neither party objected to the amendments.

### Issues to be Decided

1. Is the landlord entitled to an Order of Possession for Cause, pursuant to section 47 of the *Act*?
2. Is the landlord entitled to recover the filing fee from the tenant, in accordance with section 72 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on January 12, 2016 and is currently ongoing. Monthly rent in the amount of \$2,131.00 is payable on the first day of each month. A security deposit of \$1,050.00 and a pet damage deposit of \$1,050.00 were paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

M.Y. testified that a One Month Notice to End Tenancy for Cause (the "Notice") was served on the tenant via e-mail and registered mail on September 23, 2022. The serving email and the registered mail receipt for same were entered into evidence. The tenant testified that he received the Notice via email on September 23, 2022.

The Notice was entered into evidence, is signed by the landlord, is dated September 23, 2022 gives the address of the rental unit, states that the effect date of the notice is October 31, 2022, is in the approved form, #RTB-33, and states the following grounds for ending the tenancy:

- Tenant is repeatedly late paying rent.
- Tenant has not done required repairs of damage to the unit/site.
- Breach of material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;

The Details of Cause section of the Notice states:

Tenant is repeatedly late paying rent more than three times within nine months. 10 days notice and multiple reminder have sent out through Email but no improvement from the tenant.

Tenant did not take the necessary steps to repair damage of the window glass and the bathroom shower.

Tenant did not allow the Landlord or Agent to enter the tenant's premise for inspection.

The tenant started this Application for Dispute Resolution with the Residential Tenancy Branch on October 9, 2022. The application for dispute resolution fee was paid by the tenant on October 13, 2022.

### Analysis

Based on the tenant's testimony, I find that the tenant received the Notice on September 23, 2022 via email. I find that the tenant was sufficiently served for the purposes of this *Act*, pursuant to section 71 of the *Act*, with the Notice on September 23, 2022 because receipt was confirmed on that date.

Upon review of the Notice, I find that it meets the form and content requirements of section 52 of the *Act*.

Rule 2.6 of the Residential Tenancy Branch Rules of Procedure states that

The Application for Dispute Resolution has been made when it has been submitted and either the fee has been paid or when all documents for a fee waiver have been submitted to the Residential Tenancy Branch directly or through a Service BC Office. The three-day period for completing payment under Rule 2.4 is not an extension of any statutory timelines for making an application.

The Residential Tenancy Dispute Management Site states that the tenant paid the filing fee on October 13, 2022. Pursuant to Rule 2.6 I find that the tenant's Application for

Dispute Resolution was made on October 13, 2022, the date payment for same was made.

Section 47(4) and section 47(5) of the *Act* state that if a tenant who has received a One Month Notice to End Tenancy for Cause does not make an application for dispute resolution within 10 days after the date the tenant receives the notice, 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.

Section 55(2)(b) of the *Act* states:

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.

The tenant did not dispute the Notice within 10 days of receiving it. I find that, pursuant to section 47(5) of the *Act*, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, that being October 31, 2022.

Pursuant to section 55(2)(b) of the *Act*, the landlord is entitled to a two-day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit in accordance with the Order of Possession, the landlord may enforce this Order in the Supreme Court of British Columbia.

As the landlord was successful in this application for dispute resolution, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain \$100.00 from the tenant's security deposit.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service 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.

The landlord is entitled to retain \$100.00 from the tenant's security deposit, pursuant to section 72 of the *Act*.

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: February 27, 2023

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Residential Tenancy Branch