



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      OPC, FFL

### Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Landlord on October 5, 2022, under the *Residential Tenancy Act* (the Act), seeking:

- Possession of the rental unit due to an uncontested One Month Notice to End Tenancy for Cause (One Month Notice); and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 1:30 P.M. (Pacific Time) on February 16, 2023, and was attended by the Landlord's spouse T.G., the Landlord's Agent P.R., and three witnesses for the Landlord C.C., A.G. and K.T. All testimony provided was affirmed. The parties were provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

The parties were advised that pursuant to rule 6.10 of the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The parties were also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and confirmed that they were not recording the proceedings.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondent must be served with a copy of the Application and Notice of Hearing. As

the Tenant did not attend the hearing, I confirmed service of these documents as explained below. The Agent stated that the Notice of Dispute Resolution Proceeding (NODRP), which includes a copy of the Application and the Notice of Hearing, was sent to the Tenant at the rental unit address by registered mail on October 22, 2022. The Agent provided me with the registered mail tracking number, and copies of the registered mail receipt and addressed registered mail sticker/tag. The Agent checked the status of the registered mail during the hearing, and stated that it shows as delivered on October 26, 2022. As a result, I find that the Tenant was served on October 26, 2022, by registered mail. Residential Tenancy Branch (Branch) records show that the NODRP was emailed to the Agent on October 19, 2022. As I am satisfied that the NODRP was sent to the Tenant by registered mail on October 22, 2022, I therefore find that the Landlord complied with section 59(3) of the Act and rule 3.1 of the Rules of Procedure.

Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. Rule 7.3 of the Rules of Procedure states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to reapply. I verified that the hearing information contained in the Notice of Hearing was correct and I note that the Agent, the Landlord's spouse, and the three witnesses had no difficulty attending the hearing on time using this information. Based on the above, and as there was no evidence before me that the parties had agreed to reschedule the matter, I therefore commenced the hearing as scheduled at 1:30 P.M. on January 7, 2022, despite the absence of the Tenant or an agent acting on their behalf.

At the request of the Agent, a copy of the decision and any orders issued in favor of the Landlord will be emailed to them at the email address confirmed in the hearing.

### Preliminary Matters

#### Preliminary Matter #1

The witnesses were excluded from the proceedings after providing affirmations and being advised of the rules for conduct for the hearing. Ultimately none of the witnesses were called upon to provide testimony but I thank them for their attendance.

Preliminary Matter #2

The Agent stated that the documentary evidence before me was sent to the Tenant at the rental unit via registered mail at various points after the Application was filed, and submitted registered mail tracking receipts, addressed registered mail stickers/tags, and #RTB-34 Proof of Service documents in support of this testimony. As a result, and as there was no evidence or testimony before me to the contrary, I find that the documentary evidence before me on behalf of the Landlord was served on the Tenant in accordance with the Act and the Rules of Procedure. I therefore accept it for consideration.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession pursuant to sections 47 and 55 of the Act?

Is the Landlord entitled to recovery of the filing fee pursuant to section 72 of the Act?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the month-to-month (periodic) tenancy commenced on September 1, 2016, and that rent in the amount of \$1,000.00 is due on the first day of each month. At the hearing the Agent confirmed that a \$500.00 security deposit was also paid, which is held in trust by the Landlord.

The One Month Notice in the documentary evidence before me is signed and dated September 6, 2022, has an effective date of October 31, 2022, and states the following reason for ending the tenancy:

- the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property; and
- the tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the Landlord.

In the details of cause section it also states the following:

Continuous pattern of harrassment of the downstairs' tenants, including:

- parking a utility trailer in their landlord-designated parking spot
- making loud thumping noises deliberately at night to wake up the downstairs tenants
- being rude to these same tenants both directly and on-line. In spite of a caution letter being mailed to her by registered mail, the bullying and harrassment has only increased

The Agent stated that the One Month Notice was sent to the Tenant by registered mail on September 6, 2022, and provided me with the registered mail tracking number, a copy of the registered mail receipt, and a copy of the addressed registered mail sticker/tag. The Agent stated that the Tenant remains in possession of the rental unit, and that to their knowledge the Tenant did not dispute the One Month Notice. The Agent stated that the Tenant's behaviour has also not improved. As a result, the Agent sought an Order of Possession. The Landlord's spouse and the Agent agreed that as use and occupancy rent has been paid for the Month of February 2023, an Order of Possession for February 28, 2023, would be acceptable.

Neither the Tenant nor an agent acting on their behalf attended the hearing to provide any evidence or testimony for my consideration.

### Analysis

Based on the documentary evidence and testimony before me for consideration, and pursuant to section 90 of the Act, I find that the Tenant was deemed served with the One Month Notice on September 11, 2023, five days after I am satisfied that it was sent to the Tenant at the rental unit address by registered mail, unless earlier received.

Section 47(5) of the Act states that if a tenant who has received a One Month Notice 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. As there is no evidence before me that the Tenant disputed the One Month Notice, I find that they are conclusively presumed under section 47(5) of the Act to have accepted the One Month Notice and I find that the tenancy therefore ended on the effective date of October 31, 2022. As a result, I find that the Tenant is overholding the rental unit. As a result, and as I am satisfied that the One Month Notice complies with section 52 of the Act, the Landlord is therefore entitled to an Order of Possession pursuant to section 55(2)(b) of the Act. I therefore grant the Landlord an Order of Possession effective at 1:00 P.M. on February 28, 2023.

As the Landlord was successful in their Application, I also find that they are entitled to recovery of the \$100.00 filing fee pursuant to section 72(1) of the Act, which they are authorized to retain from the Tenant's security deposit as per their request and section 72(2)(b) of the Act.

### Conclusion

Pursuant to section 72(2)(b) of the Act, the Landlord may retain \$100.00 of the Tenant's \$500.00 security deposit in recovery of the filing fee paid for this Application. The remaining balance of the security deposit must be dealt with in accordance with the Act.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **1:00 P.M. on February 28, 2023**. The Landlord is provided with this Order in the above terms and 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.

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the Act.

Dated: February 17, 2023

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Residential Tenancy Branch