



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

**Dispute Codes**      **OPC, FFL**

### **Introduction**

This hearing dealt with an application by the landlord pursuant to the Residential Tenancy Act (“Act”) for orders as follows:

- For an order of possession pursuant to section 55 of the Act
- For reimbursement of the filing fee pursuant to section 72 of the Act

Landlord’s agent GC appeared. The tenants did not appear. The landlord was given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The hearing was conducted by conference call. The landlord was reminded to not record the hearing pursuant to Rule of Procedure 6.11. The landlord was affirmed.

The landlord’s agent testified that the One Month Notice dated January 5, 2023 with an effective date of February 28, 2023 was served on the tenants by registered mail on January 5, 2023. Two Canada Post tracking numbers were provided in evidence. Pursuant to section 88 and 90 of the Act the tenants are deemed to have been served with this notice on January 10, 2023 in accordance with the Act.

The landlord’s agent testified that they served the dispute notice and evidence on the tenants by registered mail February 1, 2023. The landlord provided Canada Post tracking information as proof of service. I find that the tenants were properly served pursuant to sections 88, 89, and 90 of the Act on February 6, 2023.

**Issue(s) to be Decided**

1. Is the One Month Notice valid and enforceable against the tenant? Is the landlord entitled to an order of possession?
2. Is the landlord entitled to recover the filing fee for this application?

### Background and Evidence

The tenancy commenced November 1, 2016 and is currently month to month. Rent is \$2,350.00 per month due on the first of the month. The landlord holds a security deposit of \$1,175.00 in trust for the tenants. The tenants still occupy the rental unit.

The landlord's agent testified that the One Month Notice was issued for repeated late rent payments. The landlord provided an accounting ledger in evidence as follows:

Accounting of Late Payments				
Rent Due Date	Rent Amount Owning	Date of Payment	Amount of Partial Payment(s)	Balance
February 01, 2022	\$ 1,900.00	Feb 03, 2022	\$ 1,000.00	0
		Feb 18, 2022	\$ 900.00	
March 01, 2022	\$ 1,900.00	Mar 03, 2022	\$ 1,000.00	\$ (1,000.00)
		Mar 12, 2022	\$ 400.00	
		Mar 25, 2022	\$ 1,000.00	
		Mar 31, 2022	\$ 500.00	
April 01, 2022	\$ 1,900.00	Apr 06, 2022	\$ 900.00	\$ (500.00)
		Apr 14, 2022	\$ 500.00	
May 01, 2022	\$ 1,900.00	May 05, 2022	\$ 500.00	\$ 500.00
		May 11, 2022	\$ 400.00	
June 01, 2022	\$ 1,900.00	Jun 02, 2022	\$ 700.00	\$ 500.00
		Jun 18, 2022	\$ 1,000.00	
		Jun 24, 2022	\$ 200.00	
July 01, 2022	\$ 1,900.00	July 01, 2022	\$ 700.00	\$ 700.00
		July 10, 2022	\$ 1,000.00	
August 01, 2022	\$ 1,900.00	August 04, 2022	\$ 1,000.00	\$ 600.00
		August 17, 2022	\$ 1,000.00	
September 01, 2022	\$ 1,900.00	September 01, 2022	\$ 900.00	\$ 600.00
		September 15, 2022	\$ 1,000.00	
October 01, 2022	\$ 1,900.00	October 05, 2022	\$ 900.00	\$ 600.00
		October 15, 2022	\$ 1,000.00	
November 01, 2022	\$ 1,900.00	November 04, 2022	\$ 900.00	\$ 600.00
		November 16, 2022	\$ 1,000.00	
December 01, 2022	\$ 1,900.00	December 09, 2022	\$ 1,000.00	\$ 1,500.00
<b>TOTAL</b>	<b>\$ 20,900.00</b>		<b>\$ 19,400.00</b>	

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### Analysis

RTB Rules of Procedure 6.6 states, "The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that

the facts occurred as claimed. The onus to prove their case is on the person making the claim.

RTB Policy Guideline 38 states in part:

The Residential Tenancy Act<sup>1</sup> and the Manufactured Home Park Tenancy Act<sup>2</sup> both provide that a landlord may end a tenancy where the tenant is repeatedly late paying rent. Three late payments are the minimum number sufficient to justify a notice under these provisions.

I find based on the evidence of the landlord that the tenants paid rent late on eleven occasions. The landlord has satisfied their onus to establish that the tenants are repeatedly late paying their rent.

The One Month Notice meets the form and content requirements of section 52 of the Act. Section 55 of the Act requires me to issue an order of possession in favour of the landlord if the One Month Notice meets the form and content requirements of section 52 of the Act and if I uphold the landlord's One Month Notice. As section 55(1) of the Act is satisfied, the landlord is entitled to an order of possession effective May 31, 2023 at 1:00pm.

As the landlord was successful he is also entitled to recover the \$100.00 filing fee for the application.

### Conclusion

The landlord's application is granted. The landlord is granted an order of possession which will be effective May 31, 2023 at 1:00 pm. The order of possession must be served on the tenants. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The landlord may deduct \$100.00 from the tenants' security deposit in recovery of 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: May 17, 2023