



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Introduction**

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

#### Landlord:

- an order of possession for cause pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

#### Tenant:

- cancellation of the landlord’s One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. No issues were raised with respect to the service of the application and evidence submissions on file.

At the outset of the hearing, the landlord withdrew the unpaid rent and security deposit related claims.

### Issues

Should the One Month Notice be cancelled? If not, is the landlord entitled to an order of possession for cause?

Is the landlord entitled to recover its filing fee?

Is the tenant entitled to recover the filing fee?

### Background and Evidence

The tenancy began on October 1, 2015. The tenant paid a security deposit of \$525.00 at the start of the tenancy which the landlord continues to hold.

The landlord testified that on February 15, 2023 he served the tenant with the One Month Notice by registered mail. Proof of service of the registered mail was submitted as evidence. The effective date of the One Month Notice was March 31, 2023. The tenant did not vacate or dispute the One Month Notice before this date. On April 1, 2023, the landlord filed his application seeking an order of possession.

The tenant's application to cancel the One Month Notice was not filed until May 4, 2023, well beyond the effective date of the One Month Notice. The tenant did not file an application seeking to extend the time limit to file such an application.

The tenant argues he was away in Asia so he did not become aware of the One Month Notice until April 10, 2023, when a friend of his staying at the rental unit sent him a copy by text message. The tenant argues he notified the landlord that he would be away and that in the past the parties have communicated via email or text when he is away. The tenant states that when he first seen the One Month Notice he thought it was in regards to an unpaid rent issue and he was under the impression that it had been cleared up and he sent a letter to the landlord communicating such. On April 15, 2023, he received a response letter from the landlord (through his friend staying at the unit), by which he was informed that the landlord was still pursuing the One Month Notice due to an ongoing issue pertaining to subletting of the unit. The tenant states he researched his options which took time and then filed the application to dispute the Notice.

The landlord submits that on January 9, 2023, the tenant advised him he was going to be away for a month or so. The landlord submits that he purposely waited until February 15, 2023 to serve the One Month Notice since the tenant advised he would be away for a month. The landlord submits that it is their policy to serve all official

documents by registered mail to avoid service related issue and comply with the Act. The landlord submits that they do not have formal agreement in place with the tenant to serve documents by e-mail. The landlord submits that on March 23, 2023 he even delivered a duplicate copy of the One Month Notice to the tenant by placing a copy in the tenant's mailbox.

### Analysis

Pursuant to section 66 of the Act, the director may extend a time limit established by this Act only in exceptional circumstances. Under subsection 66(3), the director has no authority to extend the time limit to make an application to dispute a notice to end a tenancy beyond the effective date of the notice.

The tenant did not submit any documentary evidence to support the actual dates for which he was out of the country. The tenant also did not provide any evidence to support that he notified the landlord of his extended absence beyond the "month or so" he originally advised the landlord of. Additionally, based upon the tenant's own testimony, he became aware of the One Month Notice on April 10, 2023, but he still failed to file this application until May 4, 2023, which is still more than the 10-day time limit to make such an application. The tenant's argument that he thought the matter was resolved and that it then took him time to research options is not an exceptional circumstance which would warrant extending a time limit. In this case the time limit would extend beyond the effective date of the One Month Notice for which the director has no authority.

Pursuant to section 47(4) of the Act, the tenant may make a dispute application within ten days of receiving the One Month Notice. In accordance with section 47(5) of the Act, as the tenant failed to take this action within ten days, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the One Month Notice, March 31, 2023.

The tenant's application to cancel the One Month Notice is dismissed. I find that the One Month Notice complies with the requirements of Section 52 of the Act, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the Act. As the tenant has paid for use and occupancy for the month of July 2023 the order of possession is enforceable on July 31, 2023.

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As the tenant was not successful in this application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application from the landlord.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application from the tenant. This amount may be withheld from the tenant's security deposit.

### Conclusion

I grant an Order of Possession to the landlord effective 1:00 p.m. on July 31, 2023. 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.

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: July 11, 2023

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Residential Tenancy Branch