



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNR / OPR-DR, OPC, MNR-DR, MNDCL, FFL

### Introduction

The hearing was convened following applications for dispute resolution (Applications) from both parties under the *Residential Tenancy Act* (the Act), which were crossed to be heard simultaneously.

The Tenant seeks the following:

- An order canceling a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) under section 46(4)(b) of the Act.

The Landlord requests the following:

- An Order of Possession after issuing the 10 Day Notice under section 55(2)(b) of the Act;
- An Order of Possession after issuing a One Month Notice to End Tenancy for Cause (the One Month Notice) under section 55(2)(b) of the Act;
- A Monetary Order for unpaid rent and utilities under sections 26 and 67 of the Act;
- Compensation for monetary loss or other money owed under section 67 of the Act; and
- authorization to recover the filing fee for their Application from the Tenant under section 72 of the Act.

As both parties were present, service was confirmed at the hearing. The parties each confirmed receipt of the Notice of Dispute Resolution Package (the Materials), amendments to the Landlord's Application and evidence. Based on their testimonies I

find that each party was served with these Materials as required under sections 88 and 89 of the Act.

Preliminary Issue: Severing

The Landlord applied for multiple remedies under the Act, some of which were not sufficiently related to one another. Rule 2.3 of the *Rules of Procedure* states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After reviewing the issues raised by the Landlord, I determined that the primary issues are the requests under the 10 Day Notice and One Month Notice and I exercised my discretion to dismiss with leave to re-apply, the claim for monetary compensation.

Preliminary Issue: One Month Notice

The Landlord's Advocate brought to my attention the request for an Order of Possession under on the One Month Notice first. As the effective date of the One Month Notice is after the effective date of the 10 Day Notice and no Monetary Order for unpaid rent can be issued on the basis of the One Month Notice, I found no prejudice to the Tenant in hearing the issue of the One Month Notice first.

The hearing concluded after 65 minutes. Due to time constraints, and as I was scheduled for another hearing, it was only possible to hear both parties' testimony regarding the matter of the One Month Notice, and the 10 Day Notice was not discussed.

As noted later in this Decision, I find the Landlord is entitled to an Order of Possession effective July 31, 2023 under the One Month Notice. As it was not possible to reconvene the hearing before July 31, 2023 owing to my hearing schedule, I find the issue of the Order of Possession under the 10 Day Notice to be moot and therefore the Tenant's Application disputing the 10 Day Notice is dismissed without leave to reapply.

I find the most appropriate course of action here is therefore to conclude both Applications, rather than adjourn to a later date, and allow the Landlord to pursue their monetary claim and request for a Monetary Order for unpaid rent under a separate Application at their discretion.

### Issues to be Decided

- 1) Is the Landlord entitled to an Order of Possession under the One Month Notice?
- 2) Is the Landlord entitled to recover the filing fee from the Tenant?

### Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

The parties disagreed about the details of the tenancy agreement. The Tenant provided the following testimony regarding the tenancy:

- The tenancy began on January 1, 2022.
- Rent is \$500.00 per month due on the fifteenth day of the month.
- A security deposit of \$500.00 and pet damage deposit of \$500.00 was paid by the Tenant which the Landlord still holds.
- There is a written tenancy agreement in the form of a shelter information sheet.

The Landlord's Advocate submitted the following regarding the tenancy:

- The tenancy began on December 1, 2021.
- Rent is \$1,000.00 per month due on the first day of the month.
- The Tenant never paid a security deposit or a pet damage deposit to the Landlord.
- There is no written tenancy agreement.

The parties agreed that the Tenant still occupies the rental unit, which is a lower suite within the property owned by the Landlord. The Landlord resides in another city in British Columbia. The upper portion of the rental property had been occupied by a caretaker employed by the Landlord.

The Landlord's Advocate testified as follows. The One Month Notice was issued to the Tenant via email on May 31, 2023. The parties had signed an agreement to serve documents via email the day before the One Month Notice was served. A copy of an

Address for Service (RTB-51) form was entered into evidence by the Landlord. The Address for Service form appears to be signed by both the Tenant and the Landlord and is dated May 30, 2023.

The One Month Notice was served because the Tenant had frequently been late paying rent, or not paying rent at all some months. They had also gained access to the rest of the rental property above the rental unit and had taken items from there belonging to the Landlord.

A copy of the One Month Notice was entered into evidence, is signed by the Landlord's Advocate and dated May 31, 2023 and provides an effective date of July 31, 2023. The reasons for ending the tenancy provided on the One Month Notice are:

- The tenant is repeatedly late paying rent;
- The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- The tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant; and
- The tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely jeopardize a lawful right or interest of another occupant or the landlord.

The Tenant was also served two copies via registered mail which both remain unclaimed.

The Tenant testified as follows. They did not get the One Month Notice as their phone can not open documents and they did not provide an email address for that reason. They also denied signing the Address for Service form.

They had contacted the Residential Tenancy Branch and were told they did not need to dispute the One Month Notice as they had already disputed the 10 Day Notice.

The stated they were up to date with rent, and it was actually the Landlord who had taken some of their items and disposed of them.

### Analysis

Section 47 of the Act permits a landlord to end a tenancy by issuing a One Month Notice to End Tenancy for Cause in the approved form. Section 47(4) of the Act confirms that a tenant may dispute a One Month Notice to End Tenancy for Cause by making an application for dispute resolution within 10 days of receiving the notice.

Section 47(5) of the Act states that if a tenant who has received a Notice to End Tenancy for Cause and does not make an application for dispute resolution within 10 days of receipt of the notice, they are 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.

I found the testimony of the Tenant to be contradictory and inconsistent on the subjects of the Address for Service form and receipt of the One Month Notice.

At the start of the hearing, the Tenant did not raise any issues when the Address for Service form was discussed. Later in the hearing when service of the One Month Notice was discussed, the Tenant then denied ever signing the Proof of Service form.

The Tenant's stance regarding receipt of the One Month Notice also changed throughout the hearing. At times, they denied receiving the One Month Notice, then stated they got the email from the Landlord's Advocate but could not access the document in the email itself, then stated they did not dispute the One Month Notice as they had been informed that it was not necessary, given the 10 Day Notice was disputed.

Given the above, I find on a balance of probabilities, that the One Month Notice was sufficiently served to the Tenant on May 31, 2023 via email. Therefore, it would be deemed received on June 3, 2023, the third day after it is sent in accordance with section 44 of the *Residential Tenancy Regulation*. The Tenant therefore had until June 13, 2023 to dispute the One Month Notice.

I find there is no record of the Tenant disputing the One Month Notice. Therefore, under section 47(5) of the Act, the Tenant is presumed to have accepted the One Month Notice. I also find that the One Month Notice complies with the form and content requirements of section 52 of the Act.

Based on the above findings, the Landlord is granted an Order of Possession under section 55(2)(b) of the Act, effective July 31, 2023, per the One Month Notice. The Tenant must vacate the rental unit by 1:00 PM on July 31, 2023. I find that the Tenancy will end on July 31, 2023 in accordance with the One Month Notice.

As the Landlord has been successful in their Application, I order the Tenant to pay the Landlord the amount of \$100.00 in respect of the filing fee in accordance with section 72 of the Act. The Landlord is issued a Monetary Order for \$100.00 accordingly.

### Conclusion

The Landlord is issued an Order of Possession. A copy of the Order of Possession is attached to this Decision and must be served on the Tenant. The Tenant must vacate the rental unit by 1:00 PM July 31, 2023. If the Tenant does not comply with the Order of Possession, it may be filed by the Landlord with the Supreme Court of British Columbia and enforced as an order of that court.

The Landlord is issued a Monetary Order in respect of the \$100.00 filing fee. A copy of the Monetary Order is attached to this Decision and must be served on the Tenant. It is the Landlord's obligation to serve the Monetary Order on the Tenant. The Monetary Order is enforceable in the Provincial Court of British Columbia (Small Claims Court).

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: July 17, 2023

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Residential Tenancy Branch