



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding CENTURY 21 QUEENSWOOD REALTY  
LTD and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC, FFL, CNR-MT, CNC-MT, PSF, FFT

### Introduction

This hearing dealt with cross-applications filed by the parties. On September 13, 2023, the Landlord made an Application for Dispute Resolution seeking an Order of Possession based a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Act* pursuant to Section 47 of the *Residential Tenancy Act* (the “*Act*”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On October 17, 2023, the Tenant made an Application for Dispute Resolution seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities pursuant to Section 46 of the *Act*, seeking more time to cancel this notice pursuant to Section 66 of the *Act*, seeking to cancel the Notice pursuant to Section 47 of the *Act*, seeking more time to cancel the Notice pursuant to Section 66 of the *Act*, seeking a provision of services or facilities pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

R.R. attended the hearing as an agent for the Landlord. L.D. attended the hearing as an advocate for the Tenant because the Tenant was in Australia and unable to call into the hearing for some reason. However, the Tenant was able to contact L.D. somehow, and attended the hearing on another of L.D.’s phone lines. As such, this required L.D. having to relay information to the Tenant, and for her to relay responses and submissions back.

At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they

were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

Service of the parties' respective Notice of Hearing and evidence packages was discussed, and there were no issues with service. As such, I have accepted all parties' evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

#### Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- Is the Tenant entitled to more time to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to recover the filing fee?
- Is the Tenant entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on April 1, 2020, that the rent was currently established at an amount of \$1,138.00 per month, and that it was due on the first day of each month. A security deposit of \$550.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

R.R. advised that the One Month Notice to End Tenancy for Cause was served to the Tenant by registered mail on July 4, 2023 (the registered mail tracking number was noted on the first page of this Decision). As noted on the Tenant's Application, she indicated that she received this Notice on July 5, 2023, by registered mail.

The reason the Landlord served the Notice is because the Tenant is repeatedly late paying rent. The effective end date of the tenancy was noted as August 31, 2023, on the Notice.

The Tenant testified that she filed an Application to dispute the Notice, but she was not sure when she did this. Regardless, she advised that she "messed up", that the Notice of Hearing package was "buried in her email", that her Application was then "void", and that she had to pay another \$100 filing fee for this Application.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 52 of the *Act* requires that any notice to end tenancy issued by a Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form. In reviewing the Notice, I find that this all of the requirements of Section 52 and that it is a valid Notice.

The undisputed evidence is that the Tenant acknowledged receiving the Notice by registered mail on July 5, 2023. According to Section 47(4) of the *Act*, the Tenant had 10 days to dispute this Notice, and Section 47(5) of the *Act* states that "*If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), 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.*"

However, the Tenant did not make a successful Application to dispute this Notice within 10 days of receiving it, but only successfully made an Application to dispute this Notice on October 17, 2023. I find it important to note that the information with respect to the Tenant's right to dispute the Notice is provided on the first and third page of the Notice.

While the Tenant made a request for more time to dispute the Notice, the Tenant's initial Application was abandoned because she lost track of the Notice of Hearing package email, from the Residential Tenancy Branch, and failed to serve this package to the Landlord. I do not accept that this negligence should be a reason to allow the Tenant more time to re-file. Furthermore, Section 66(3) of the *Act* prohibits more time being granted if an Application to dispute the Notice is made after the effective date of the Notice. Given that her Application was made on October 17, 2023, which is well past the effective date of the Notice of August 31, 2023, it is not possible to consider this request.

As such, I am satisfied that the Tenant has been conclusively presumed to have accepted the Notice. Consequently, I find that the Landlord is entitled to an Order of Possession that is effective on **January 31, 2024, at 1:00 PM after service of this Order** on the Tenant, as per R.R.'s request.

Given that an Order of Possession was granted on the Notice, it was not necessary to consider the Tenant's dispute of a 10 Day Notice to End Tenancy for Unpaid Rent.

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. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain \$100.00 from the security deposit in complete satisfaction of this debt.

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.

### Conclusion

Based on the above, I grant an Order of Possession on the One Month Notice to End Tenancy for Cause, to the Landlord effective on **January 31, 2024, at 1:00 PM after service of this Order** 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 Tenant's Application for Dispute Resolution is dismissed without leave to reapply.

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: December 18, 2023

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Residential Tenancy Branch