Dispute Resolution Services
Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

DECISION

Introduction

A new hearing was scheduled pursuant to a decision and order issued by Justice Morishita on February 13, 2025, in response to the Tenant's petition for Judicial Review of the settlement recorded by a different Arbitrator on November 6, 2025. Justice Morishita ordered the Arbitrator's settlement and Order of Possession of November 6, 2024, be set aside and the matter be set for a new hearing with the Residential Tenancy Branch (the RTB).

The original hearing that resulted in a settlement dealt with the Tenant's application to dispute a One Month Notice for Cause (One Month Notice) under section 47 of the Act and the Landlord's application for an Order of Possession based on a One Month Notice to End Tenancy for Cause (One Month Notice) under sections 47 and 55 of the Act. The Tenant's original application also included the following claims that were severed:

- An order to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided, under sections 27 and 65 of the Act
- An order for the Landlord to make repairs to the rental unit under sections 32 and 62 of the Act
- An order for the Landlord to provide services or facilities required by law under section 27 of the Act
- Authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The Tenant was served the original Proceeding Package on October 11, 2024, by pre-agreed e-mail in accordance with section 43(2) of the *Residential Tenancy Regulation*. The Landlords also submitted a copy of an Address for Service form which was signed by the Tenant on November 26, 2021, indicating the Tenant agreed to receive documents by e-mail.

I find that the Landlord acknowledged service of the original Proceeding Package and are duly served in accordance with the Act.

Service of Evidence

Both parties confirmed they received the evidence served by the other side in the original hearing.

The Landlord's counsel C.R. (the Landlord's Counsel) advised they served 2 sets of additional evidence after Justice Morishita remitted this matter back to the RTB for a new hearing. The Landlord's Counsel advised that additional evidence was the affidavit before the British Columbia Supreme Court, served by email on the Tenant March 31, 2025, and 2 British Columbia Supreme Court decision, served by email on April 4, 2025. The Tenant advised they received both and confirmed they are taking no issue with the additional evidence.

The Tenant advised they served 1 piece of additional evidence after Justice Morishita remitted this matter back to the RTB for a new hearing. The Teant advised they provided a transcript of a video from July 19, 2024, to the Landlord by email on April 1, 2025. The Landlord advised the Landlord's agent H.W. (the Landlord's Agent) received that email and they are taking no issue with the evidence.

Preliminary Issues

The following issues are dismissed with leave to reapply:

- An order to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided, under sections 27 and 65 of the Act
- An order for the Landlord to make repairs to the rental unit under sections 32 and 62 of the Act
- An order for the Landlord to provide services or facilities required by law under section 27 of the Act
- Authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

Residential Tenancy Branch Rules of Procedure, Rule 6.2, states that if, in the course of the dispute resolution proceeding the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply. The Tenant argued everything is significantly related because they received the One Month Notice for Cause after requesting repairs. The Landlord's Counsel argued that the only issue remitted back to the RTB for consideration is the One Month Notice and whether it was filed in time and if not whether there was extenuating circumstances.

Based on the testimony of both parties, I find that the matter remitted back to the RTB was the One Month Notice to Cause, which was the only issue dealt with in the original decision and the basis for the judicial review application. Additionally, I find that whether there is cause to end the tenancy is not significantly related to the issue of repairs.

Aside from the application to cancel the One Moth Notice, I am exercising my discretion to dismiss these issues identified in the application with leave to reapply as these matters are not related. Leave to reapply is not an extension of any applicable time limit.

Issues to be Decided

Should the Landlord's One Month Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

Evidence was provided showing that this tenancy began on January 1, 2019, with a monthly rent of $1,351.75, due on the first of the month, with a security deposit in the amount of $598.00. The Landlord advised since the original hearing no rent has been accepted by the Landlord.

The Tenant filed to dispute a One Month Notice for Cause, and the Landlord filed a cross application seeking an Order of Possession on the One Month Notice for Cause. The One Month Notice for Cause was dated September 24, 2024 (the One Month Notice).

Service of the One Month Notice

The Landlord served the One Month Notice for Cause using three methods of service. The Landlord advised they served the One Month Notice in person to the Tenant on September 24 ,2024, the Tenant took the One Month Notice but would not sign a proof of service form. The Landlord's Counsel advised because the Tenant would not sign the proof of service form the Landlord also severed the One Month Notice via email on September 24, 2024, to the email address provided by the Tenant on an RTB Address for Service form (the RTB Form #51), signed by the Tenant November 26, 2021. A copy of the One Month Notice for Cause sent via email and the RTB Form #51 were provided by the Landlord. The Landlord's Counsel advised that the Tenant was also sent the One Month Notice via registered mail on September 24, 2025, and it was received September 26, 2024.

The Tenant confirmed on September 24, 2024, the Tenant was given the One Month Notice in their rental unit. The Tenant also advised they received a copy of the One Month Notice by email on September 24, 2024, at 5:00pm but did not open it until September 25, 2024. The Tenant advised a copy of the One month Notice also came by registered mail shortly after, but the Tenant could not recall the date.

Disputing a One Month Notice & Extenuating Circumstances

The Tenant disputed the One Month Notice on October 9, 2024. The Tenant argued at the previous RTB hearing on November 6, 2024, the Landlord withdrew the One Month Notice that was served in person and since the One Month Notice served by email and registered mail were duplicates of the One Month Notice served in person, they were all cancelled. The Tenant argued the transcript from the hearing on November 6, 2024, supports this. I will note the transcript provided by the Tenant states the Landlord said "we served it first in person. However, the tenant was not willing to sign the proof of service document, so we then followed up with email and registered mail the exact same day". The Tenant was asked if prior to the November 6, 2024, hearing if the Tenant thought the One Month Notice had been withdrawn by the Landlord and the Tenant advised it was unclear to the Tenant if they needed to dispute the One Month Notice since the Landlord botched their service.

The Tenant also argued they applied to dispute the One Month Notice served by registered mail as that was the clearest one to respond to. The Tenant also argued that the Landlord's evidence focused on the service of the One Month Notice via email rather than the One Month Notice served in person. Additionally, the Tenant argued there are Ontario Tribunal decisions that support the position that when serval notices are given, they should be cancelled because giving multiple notices creates confusion.

The Tenant was asked if there were any exceptional circumstances that prevented them from disputing on time and the Tenant argued the cause section of the One Month Notice was invalid and that this was the exceptional circumstance.

The Landlord's position is that the earliest date a person receives a notice is the most important date and that there is a distinction between when a notice is received and deemed received. The Landlord's Counsel argued that where there is evidence when a notice is received then there is no need to rely on the deeming provisions in section 90 of the Act. The Landlord pointed to 2 British Columbia Supreme Court decisions to support this proposition. The Landlord argued the Tenant admitted in the hearing and in their previous affidavit that they received the One Month Notice in person on September 24, 2024, and then by email on September 24, 2024, as such the Tenant had 10 days from that date to dispute the One Month Notice and there is no need to rely on the deeming provisions. The Landlord's position is that the Tenant did not dispute the One Month Notice within the timeframe required, cannot establish exceptional circumstances and is deemed to have accepted the end of the tenancy.

The Landlord argued the One Month Notice was never withdrawn by the Landlord at the hearing or at any other point. The Landlord's Counsel argued it was clear the Landlord was not withdrawing the One Month Notice as the Landlord doubled down and served the One Month Notice by email and registered mail.

The Landlord's position is that it would be completely unfair to argue the One Month Notice should be cancelled because of confusion over the One Month Notice being

served multiple ways as the only reason the One Month Notice had to be served multiple ways is because the Tenant refused to sign the proof of service form. The Landlord also argued there are no extenuating circumstances that would allow an extension to the time limits.

One Month Notice

The Landlord's position is that the One Month Notice was issued because the Tenant installed duct tape throughout the rental unit which caused a hazed and other health, and safety concerns and the Tenant has engaged with other occupants in an inappropriate manner which has impacted other occupants' right to quiet enjoyment. The Landlord provided photographs, emails, and warning letters to support the One Month Notice.

The Tenant's position is that the Landlord's allegations are false.

Analysis

When two parties to a dispute provide equally possible accounts of events or circumstances related to a dispute, the party making the claim has responsibility to provide evidence over and above their testimony to prove their claim.

Should the Landlord's One Month Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?

Section 47 of the Act states that a landlord may issue a Notice to End Tenancy for Cause to a tenant if the landlord has grounds to do so. Section 47 of the Act states that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If a tenant does not dispute the One Month Notice they are conclusively presumed to have accepted the end of the tenancy under section 47(5).

The deeming provisions in section 90 are generally used in the absence of evidence of the date records were actually received, as stated in Policy Guideline #12. An arbitrator may also consider acknowledgment of service by the party receiving the records and in that case an arbitrator may then determine the date of service is the date the party acknowledged receipt of service and is earlier than the deeming provisions.

There is case law that supports that the purpose of service is fulfilled once notice has been received. Whether or not the Landlord's application focused on the service in person is not relevant to determining the date a record was received. The Tenant's own testimony establishes that the One Month Notice was received by the Tenant in person on September 24, 2025, in accordance with section 88 of the Act. The Tenant disputed the One Month Notice on October 8, 2024, which was past the 10 day deadline. As such, the Tenant did not dispute the One Month Notice within the timeframe required.

Even if the One Month Notice was based on the email service, the Tenant testified they received the One Month Notice via email on September 24, 2024, and opened it September 25, 2024. Based on the Tenant's own testimony, the One Month Notice was received at the latest by email on September 25, 2024, in accordance with section 88 of the Act. As such, even in the alternative, if the date the Tenant received the One Month Notice was September 25, 2024, based on the Tenant's own testimony, the Tenant still did not dispute the One Month Notice within the time frame required.

Based on the above, I find that the Tenant did not dispute the One Month Notice within the time frame required and is conclusively presumed to have accepted the end of the tenancy under section 47(5).

While the Tenant did not apply for more time to dispute the One Month Notice, I have still considered whether there were exceptional circumstances to warrant extending the time limit to dispute.

Section 66 of the Act states that the director may extend a time limit established by the Act only in exceptional circumstances. The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end tenancy beyond the effective date of the notice. As stated in Policy Guideline #36 "The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling". Additionally, the party putting forward the reason for more time must provide persuasive evidence.

The Tenant argued that the exceptional circumstance that warrants extending the time limit to dispute the One Month Notice is that the reasons of cause were based on misinformation. Whether or not the reasons for cause are true or not does not impact whether the Tenant was able to file their dispute within the time frame required. As such, I find that the Tenant has not presented or established an exceptional circumstance that prevented them from disputing the One Month Notice within the time required.

I also do not accept the argument of the Tenant that the Landlord withdrew the One Month Notice. There is no evidence to support the Landlord ever withdrew the One Month Notice. The fact that the Landlord served the One Month Notice by email and registered mail after the Teant refused to sign the proof of service form, supports that the Landlord did not cancel the One Month Notice. Even if I were to consider what was said in the previous November 6, 2024, hearing, there is nothing to support the Landlord cancelled the One Month Notice. Even the transcript provided by the Tenant does not support that the Landlord cancelled the One Month Notice. The transcript states the Landlord said "We served it first in person. However, the tenant was not willing to sign the proof of service document, so we then followed up with email and registered mail the exact same day". This transcript does not support or indicate that the Landlord ever withdrew the One Month Notice but rather explains why the Landlord also served the One Month Notice by 2 other methods.

The Tenant also argued the One Month Notice should be cancelled because the service by multiple methods was confusing. The Tenant pointed to Ontario Tribunal decisions to support this position. Section 64(2) of the Act states that each decision must be made on the merits of the case as disclosed by the evidence admitted and an arbitrator is not bound to follow other decisions of the RTB. As such, I find that any Ontario Tribunal decision is not binding on me, and I must make my decision based on the evidence and submission in the hearing. As such, I find that the One Month Notice should not be cancelled because of any confusion from the Landlord serving the One Month Notice through multiple methods. I find that any confusion was the result of the Tenant declining to sign the proof of service form. Additionally, the Tenant advised they chose to dispute the One Month Notice served by registered mail as that was the clearest provable notice to respond to. I find this statement supports the fact that the Tenant knew they needed to dispute the One Month Notice.

Based on the above, I find that the Tenant did not dispute the One Month Notice within the time frame required and has not established exceptional circumstances that warrant an extension of the time to dispute. As such, under section 47(5), the Tenant is conclsuviely presumed to have accepted the end of the tenancy. As such, the Tenant's claim to cancel the One Month Notice is dismissed without leave to reapply.

Is the Landlord entitled to an Order of Possession based on a Notice to End Tenancy?

Section 55(1) of the Act provides that where a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies withs section 52 of the Act, an arbitrator must grant the landlord an Order of Possession. Further, a landlord may request an Order of Possession under section 55(2)(b) of the Act.

As I have cancelled the Tenant's application to dispute the One Month Notice, the Landlord filed a cross application seeking an Order of Possession and I find that the One Month Notice complies with section 51 of the Act, I grant the Landlord an Order of Possession.

The Tenant argued the Order of Possession should be 2-3 months after the hearing as the Tenant will need to move to a new country to find a place to live and the visa process will take 2 months. However, I find that it would be unreasonable to grant an Order of Possession for 3 months, as there is nothing to support the Tenant could not find new housing within BC rather than moving to a new country. I grant an Order of Possession for May 31, 2025, as I find this takes into consideration that the Tenant has lived in the rental unit since 2019.

Is the Landlord entitled to recover the filing fee for this application from the Tenant?

As the Landlord was successful in their application, I find that the Landlord is entitled to recover the $100.00 filing fee paid for this application under section 72 of the Act. The

Landlord is entitled to withhold $100.00 from the Tenant’s security deposit to recover the filing fee, under section 72 of the Act.

Is the Tenant entitled to recover the filing fee for this application from the Landlord?

As the Tenant was not successful, the Tenant's application for authorization to recover the filing fee for this application from the Landlord under section 72 of the Act is dismissed, without leave to reapply.

Conclusion

I grant an Order of Possession to the Landlord **effective by 1:00 PM on May 31, 2025, after service of this Order on the Tenant**. Should the Tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The Landlord is authorized to withhold $100.00 from the Tenant’s security deposit to recover the filing fee, under section 72 of the Act.

The Tenant's application for cancellation of One Month Notice under section 47 of the Act and to recover the filing fee 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 Act.

Dated: April 8, 2025

Residential Tenancy Branch