



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Landlord under the *Residential Tenancy Act* (the “Act”), for an Order of Possession and recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the agent for the Landlord (the “Agent”), who provided affirmed testimony. The Tenant did not attend. The Agent was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the Respondent must be served with a copy of the Application and Notice of Hearing. As the Tenant did not attend the hearing, I confirmed service of these documents as explained below.

The Agent testified that the Application and the Notice of Hearing were sent to the Tenant on September 28, 2017, by registered mail and provided a copy of the registered mail receipt in the evidence before me. As a result, I find that the Tenant was deemed served with the Application and the Notice of Hearing on October 3, 2017, five days after they were sent by registered mail.

I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision. At the request of the Agent, copies of the decision and any applicable orders will be e-mailed to them at the e-mail address provided on the Application.

### Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

Is the Landlord entitled to retain \$100.00 from the security deposit paid by the Tenant in recovery of the filing fee pursuant to section 72 of the *Act*?

### Background and Evidence

The tenancy agreement in the documentary evidence before me, signed May 30, 2016, indicates that the month to month tenancy began June 1, 2016, and that rent is due on the first day of each month. The tenancy agreement indicates that rent was \$775.00 per month at the start of the tenancy; however, the Agent testified that a rent increase took effect July 1, 2017, increasing the Tenant's monthly rent to \$803.00. In support of his testimony, the Agent provided a copy of a Notice of Rent Increase – Residential Rental Units (the "Notice of Rent Increase"). The tenancy agreement also indicates that a security deposit in the amount of \$387.50 was paid by the Tenant, which the Landlord still holds.

The Agent testified that the Tenant and persons permitted on the property by the Tenant have significantly interfered with or unreasonably disturbed another occupant or the Landlord and as a result, a One Month Notice to End Tenancy for Cause (the "One Month Notice") was personally served on the Tenant on June 7, 2017. The Agent submitted a Proof of Service Notice to End Tenancy (the "Proof of Service") signed by the Tenant and the Agent indicating that the One Month Notice was served in the manner described above.

The One Month Notice in the documentary evidence before me, dated June 7, 2017, has an effective vacancy date of July 7, 2017, and gives the following reason for ending the tenancy:

- The Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord.

In support of the reasons for which the One Month Notice was served, the Agent provided several letters written and signed by other occupants and former occupants of the premises detailing how they have been unreasonably disturbed by the Tenant or persons permitted on the property by the Tenant.

The Agent testified that although the Tenant did not dispute the One Month Notice, they have not vacated the rental unit and currently owe \$993.00 in outstanding rent and late fees.

### Analysis

Section 47(1) of the *Act* outlines the grounds on which to issue a Notice to End Tenancy for cause and states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

However, section 47(4) of the *Act* states that a tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice. Further to this, 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.

I have reviewed all relevant documentary evidence and oral testimony and in accordance with section 88 of the *Act*, I find that the Tenant was personally served with the One Month Notice on June 7, 2017. Although the 10 Day Notice states that the effective date of the notice is July 7, 2017, section 47(2) of the *Act* states that a notice under this section must end the tenancy effective on a date that is not earlier than one month after the date the notice is received, and the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement. Section 53 of the *Act* states that if the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the required notice period. As a result, I find that the incorrect effective date of the 10 Day Notice, July 7, 2017, is automatically corrected to July 31, 2017, pursuant to section 53 of the *Act*.

As there is no evidence before me to the contrary, I find that the Tenant has failed to dispute the One Month Notice within that 10 day period granted under section 47(4) of the *Act* and the Tenant is therefore conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, July 31, 2017. The Landlord is therefore entitled to an Order of Possession pursuant to section 55 of the *Act*.

Pursuant to section 72 of the *Act*, I also find that the Landlord is entitled to retain \$100.00 from the security deposit paid by the Tenant in recovery of the filing fee. The remaining balance of the security deposit must be dealt with in accordance with the *Act*.

### Conclusion

The Landlord is granted an Order of Possession, which will be effective **two (2) days after service of this order** on the Tenant. This Order of Possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

I also Order that the Landlord deduct \$100.00 for the security deposit paid by the Tenant in order to recover the cost of the filing fee. The remaining balance of the security deposit must be dealt with in accordance with the *Act*.

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 11, 2017

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Residential Tenancy Branch