



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes:** Tenant: CNR, LRE, CNC-MT, FFT  
Landlords: OPC, FFL

### 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:

The landlords requested:

- an Order of Possession for cause pursuant to section 55;
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenant requested:

- cancellation of the landlords’ 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- cancellation of the landlords’ 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- more time to make an application to cancel the landlords’ 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 66;
- an order to suspend or set conditions on the landlords’ right to enter the rental unit pursuant to section 70;
- authorization to recover their filing fee for this application from the landlords pursuant to section 72

While the landlords attended the hearing by way of conference call, the tenant did not. I waited until 9:40 a.m. to enable the tenant to participate in this scheduled hearing for 9:30 a.m. The landlords were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlords and I were the only ones who had called into this teleconference.

The landlords gave sworn testimony that on November 5, 2020, the landlords served the tenant with their Application for Dispute Resolution hearing package and evidence by way of registered mail. The landlords provided proof of service and the tracking information in their evidentiary materials that show that the package was delivered on November 7, 2020. In accordance with sections 88, 89, and 90 of the Act, I find the tenant deemed served with the landlord's application and evidence on November 10, 2020, five days after mailing. The landlords confirmed receipt of the tenant's application and evidence package.

The landlords testified that they had served the tenant with a 1 Month Notice on September 10, 2020 by way of posting the 1 Month Notice on the tenant's door. In accordance with sections 88 and 90 of the Act, I find the tenant deemed served with the 1 Month Notice on September 13, 2020, 3 days after posting.

During the hearing, the landlords testified that the tenant had paid the October 2020 rent after being served with the 10 Day Notice to End Tenancy on October 2, 2020. As the tenant paid the monthly rent within the required time period, the 10 Day Notice is considered cancelled, and is of no force or effect.

Rule 7.3 of the Rules of Procedure provides as follows:

**7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply

Accordingly, **in the absence of any submissions in this hearing from the tenant, I order the tenant's entire application dismissed without leave to reapply.**

**Issues to be Decided**

Are the landlords entitled to an Order of Possession for cause?

Are the landlords entitled to recover the filing fee for their application?

**Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applications before me and my findings around it are set out below.

This month-to-month tenancy began on December 15, 2019. Monthly rent is currently set at \$1,545.00, payable on the first of the month. The landlords had collected a security deposit in the amount of \$772.50, which they still hold. The landlords testified in the hearing that both parties had agreed that the tenant would be responsible for paying a \$200.00 pet damage deposit per pet upon the arrival of the tenant's dogs. The landlords testified that the tenant originally had two dogs, but one of the dogs had recently passed away.

The landlords issued the 1 Month Notice on the following grounds:

- i) Breach of a material term of the tenancy agreement that was not corrected within a reasonable amount of time after written notice to do so;
- ii) A security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.

The landlords testified that they had discovered in February 2020 that the tenant's two dogs had arrived, and requested on February 15, 2020 that the tenant pay the \$200.00 pet damage deposit per dog as soon as possible. The landlord included the message in their evidentiary materials. The message read "I see you got your dogs (thatsgood). Please pay a pet deposit (\$200.00/dog) asap. Please make sure you clean up after them right away. Thanks.". The landlord testified that no cats were allowed, but they had agreed that the tenant may have his two dogs.

By March 22, 2020, the landlords still had not received the pet damage deposits for the dogs, but sent the tenant a message that they would be temporarily waiving the pet deposit. The message read: "Just a note to let you know...and I have decided, in the interest of public safety and in light of COVID-19 recently showing up in Yellowknife, to waive the requirement for the pet deposit until the pandemic is at the very least, locally resolved. Please keep the property picked up as we will continue to make regular inspections. Thank you and stay healthy!".

On June 2, 2020, the landlords sent the tenant an email that "since the province is re-opening, albeit slowly, we would like the pet damage deposit in full by July 1<sup>st</sup>, or the dogs removed by that date". The tenant responded that "you waved pet deposit and look it up the...border is still closed thank you". The landlords testified that they had waived the pet damage deposit only on a temporary basis, which was actually due upon the arrival of the tenant's dogs. The landlords testified that they had given the tenant a further extension until July 1, 2020 to pay the deposit, but the tenant has refused to pay the deposit by that date. The landlords testified that they had complied with the ministerial order that prohibited the issuance of a 1 Month Notice to End Tenancy, and

waited until September 10, 2020 to serve the tenant with the Notice for failing to pay the pet damage deposit within the required 30 days.

### **Analysis**

**Section 55(1)** of the *Act* reads as follows:

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
  - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

A copy of the 1 Month Notice was submitted for this hearing, and I find that the landlords' 1 Month Notice complies with section 52 of the *Act*, which states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the effective date of the 1 Month Notice, October 31, 2020. In this case, this required the tenant and anyone on the premises to vacate the premises by October 31, 2020. As this has not occurred, I find that the landlords are entitled to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*.

The landlords will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

As the landlords were successful in their application, I allow the landlords to recover the filing fee for this application from the tenant. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain \$100.00 of the tenant's security deposit in satisfaction of the monetary award.

**Conclusion**

The tenant's entire application is dismissed without leave to reapply.

I find that the landlords are entitled to an Order of Possession.

I grant an Order of Possession to the landlords effective two **days 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.

As the landlords were successful in their application, I allow the landlords to recover the filing fee for this application from the tenant. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain \$100.00 of the tenant's security deposit in satisfaction of the monetary award.

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: January 11, 2021

---

Residential Tenancy Branch