



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

**Dispute Codes**      Tenant: CNR, LRE, LAT, OLC  
Landlord: OPR-DR, OPC, MNR-DR, FFL

### **Introduction**

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on April 18, 2023.

The Landlord was present at the hearing with her advocate. One of the respondents, BM, was present at the hearing. All parties provided affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

### **Preliminary and Procedural Matters – Service**

The Landlord stated she sent her Notice of Dispute Resolution Proceeding and evidence by registered mail to both respondents, BM and MP. The Landlord provided registered mail tracking information to show this was sent on December 13, 2022. Although BM denies getting this package, pursuant to section 90 of the Act, I find both respondents BM and MP, are deemed to have received the package, which was sent to the rental unit, 5 days after it was mailed, on December 18, 2022. The Landlord also served their amendment by registered mail, and sent two packages, one to both BM and MP, on March 24, 2023. The Landlord uploaded tracking information for those documents. I find both MP and BM are deemed to have received this package 5 days

after it was sent, pursuant to section 90 of the Act. I find the Landlord sufficiently served both respondents with all documents.

The Landlord acknowledged receipt of the Tenant's Notice of Dispute Resolution Proceeding and a copy of the tenancy agreement, but stated that they never received any further evidence from the Tenants. BM was unclear about what was sent and when. As such, I find BM failed to sufficiently demonstrate what he served and when, such that I could be satisfied he served the Landlord with his evidence. I find the Tenants' Notice of Dispute Resolution Proceeding and tenancy agreement was sufficiently served, but not the subsequent evidence the Tenants recently uploaded.

### Preliminary and Procedural Matters – Severing Issues

Both parties applied for multiple remedies under the *Residential Tenancy Act* (the "Act"), a number of which were not sufficiently related to one another.

Section 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 looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues in both applications deal with whether or not the tenancy is ending due to a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) or due to the 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) and whether or not the Landlord is entitled to a monetary order for the unpaid rent. As a result, I exercised my discretion to dismiss, with leave to reapply, all of the grounds on the Tenant's application with the exception of the following ground:

- to cancel the 10-Day Notice

Further, since the issues that the Landlord has cross-applied for all relate to the 10-Day Notice, the end of the tenancy, and rent owed, at the outset of the hearing I made it clear that I would consider them in this hearing.

The Landlord has requested to amend his application to include rent that has accrued since the original application date. I turn to the following Rules of Procedure (4.2):

### **Amending an application at the hearing**

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

I hereby amend the Landlord's application accordingly.

Issue(s) to be Decided

- Is the landlord entitled to an order of possession under the *Act*, based off either of the Notices issued?
- Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

Both parties provided conflicting testimony during the hearing. However, in this review, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine the issues identified above. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings.

*1 Month Notice*

The Landlord stated that they sent the 1 Month Notice to both BM and MP on December 14, 2022, by registered mail. Proof of mailing was provided in the hearing. A copy of the 1 Month Notice was provided into evidence, which shows that it was issued under several different grounds. The details were specified in the details of cause section of the 1 Month Notice. The Landlord spoke to the reasons why the Notice was issued in the hearing.

BM stated he never picked up the registered mail package and never received the 1 Month Notice. As such, he did not dispute it.

The Landlord stated that current rent owing is \$9,200.00, which is rent for September 2022 – April 2023. Both parties confirmed that monthly rent is set at \$1,150.00 and is due on the first of the month, and the Landlord does not currently hold a security deposit. BM stated he has tried to pay rent a couple of times, but he acknowledged that the above noted months remain unpaid at this time.

A copy of the tenancy agreement was provided into evidence, and it shows that BM and MP were both listed as Tenants, but only MP signed the document. The Landlord stated

that she was present at the time MP signed the document. BM did not speak to this issue in the hearing. The Landlord stated that BM is an occupant, not a tenant.

### Analysis

First, I turn to the issue regarding who is a Tenant, and who is an occupant. I note that the Tenancy Agreement provided into evidence shows that both MP and BM were listed as Tenants at the top of the tenancy agreement. However, only MP signed the agreement as a Tenant on the last page of that document. I find this makes MP as the sole Tenant, and BM is an occupant. MP is the person liable under the Act for this tenancy, given she is the only person who signed the tenancy agreement as a Tenant. The Landlord stated that MP was present with her at the time the agreement was signed, and the Tenant did not directly speak to this issue in the hearing.

Based on the testimony and documentary evidence, and on a balance of probabilities, I find:

After reviewing the Notice, I am satisfied that it complies with section 52 of the *Act* [*form and content of notice to end tenancy*]. Section 47 of the *Act* permits a landlord to end a tenancy for cause. A tenant who receives a notice to end tenancy for cause has 10 days after receipt to dispute it by making an application for dispute resolution. Failure to dispute the notice to end tenancy for cause in this period results in the conclusive presumption that the tenant has accepted the end of the tenancy, under section 47(5) of the *Act*.

In this case, the Landlord issued the Notice for numerous reasons and listed the issues under the details of cause section of the Notice.

I note the Landlord sent the 1 Month Notice to the Tenant, MP, as well as the occupant, BM, on December 14, 2022, by registered mail. Proof of mailing was provided. Pursuant to section 90 of the Act, I find the Tenant, MP, is deemed to have received the 1 Month Notice on December 19, 2022, 5 days after it was sent to the rental unit.

The Tenant had 10 days after deemed receipt of this 1 Month Notice, until December 29, 2022, to dispute it with our office. This was not done. Accordingly, pursuant to section 47(5) of the *Act*, I find the tenant is conclusively presumed to have accepted the end of the tenancy on the effective date of the 1 Month Notice.

Based on this, I find the Landlord is entitled to an order of possession, which will be effective **two days after service** on the Tenant.

With respect to the amount of rent owed, I find there is sufficient evidence and testimony to show that the Tenant owes and has failed to pay \$9,200.00 in rent for September 2022 – April 2023 (8 x \$1,150.00). I award this amount in full.

Pursuant to section 72 of the Act, I award the recovery of the \$100.00 filing fee paid by the Landlord. In summary, I order that the Tenant pay \$9,300.00.

Having made these findings, it is not necessary to consider the merits of the 10 Day Notice issued by the Landlord.

### Conclusion

The landlord is granted an order of possession effective **two days after service** on the tenant. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$9,300.00**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that 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 *Residential Tenancy Act*.

Dated: April 24, 2023

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Residential Tenancy Branch