



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      LL: OPL, FFL  
                                 TT: CNL-MT, LRE, OLC

### **Introduction**

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the Residential Tenancy Act (the “Act”).

The Landlord’s Application for Dispute Resolution was made on September 18, 2023 (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the “Act”):

- an order of possession for landlord use of the property; and
- an order granting recovery of the filing fee.

The Tenant’s Application for Dispute Resolution was made on September 27, 2023 (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the Act:

- an order cancelling a Two Month Notice for Landlord’s Use of the Property dated July 24, 2023 (the “Two Month Notice”);
- more time to extend the time limit established by the Act, to make an Application for dispute resolution to obtain an order cancelling the Two Month Notice;
- an order restricting the Landlord’s right to enter the rental unit; and
- an order that the Landlord comply with the Act, tenancy agreement, or regulations.

The Landlord, the Landlord’s Agent C.N. and the Tenant attended the original hearing at the appointed date and time. At the outset of the original hearing, the Tenant requested an adjournment as they had a medical appointment at the same time as the hearing. The Tenant disconnected from the hearing prior to any determinations being made on how we will proceed.

The Landlord did not consent to an adjournment as they are motivated to gain an Order of Possession for vacant possession of the rental unit for Landlord's use. Upon further review, it was discovered that neither party provided a copy of the Two Month Notice that the Tenant applied to dispute, and the Landlord is seeking an order of possession for. The Landlord was directed to submit a copy of the Two Month Notice for my consideration.

The original hearing was subsequently adjourned and reconvened on January 8, 2024 and was attended by the Landlord, the Landlord's Agent, and the Tenant. At the start the reconvened hearing, the Tenant confirmed receipt of the Landlord's Proceeding Packaged and evidence. As such, I find these documents were sufficiently served pursuant to Section 71 of the Act.

The Tenant stated that they served their Proceeding Package to the Landlord. The Landlord stated that they did not receive the Tenant's Proceeding Package. The Tenant did not submit any proof of service. The Tenant then proceeded to request another adjournment as they had a previously scheduled work appointment. The Landlord denied the Tenant's request for an adjournment.

Based on the internal Tenancy Branch notes on file, the Tenant contacted the Tenancy Branch on January 3, 2024 seeking to reschedule the hearing. The Tenant was notified that they would need to obtain the Landlord's consent before changing the hearing date, or else the Tenant could appoint a representative to attend the hearing and make submissions on behalf of the Tenant.

The Tenant stated that he could not take part in the hearing. No one else attended the hearing for the Tenant.

### Preliminary Matters

#### **7.8 Adjournment after the dispute resolution hearing begins**

At any time after the dispute resolution hearing begins, the arbitrator may adjourn the dispute resolution hearing to another time.

A party or a party's agent may request that a hearing be adjourned.

The arbitrator will determine whether the circumstances warrant the adjournment of the hearing.

### 7.9 Criteria for granting an adjournment

Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

I find that the Tenant had an opportunity to appoint a representative and failed to do so. I find this demonstrates neglect from the Tenant who could have anticipated and taken action to have someone attended on their behalf. While the Tenant stated that they had an appointment and was therefore unable to take part in the hearing, I find that the Tenant provided insufficient evidence to demonstrate that they had an appointment which prevented them from taking part in the hearing.

Seeing as the Landlord is seeking an order of possession, I find that by adjourning the hearing would prejudice the Landlord. As such, I declined the Tenant's request for an adjournment. The Tenant was given an option to continue with the hearing, or else could disconnect from the hearing and the hearing would continue in their absence. The Tenant chose to disconnect.

As neither the Tenant, nor someone appointed to represent the Tenant was prepared to proceed in support of the Tenant's Application, combined with the fact that the Landlord stated that they did not receive the Tenant's Proceeding Package, I find that the Tenant's Application is dismissed without leave to reapply.

I note that Section 55 of the *Residential Tenancy Act (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 is compliant with the *Act*.

I find that the Two Month Notice submitted by the Landlord complies with the requirements for form and content. The Landlord stated that the Tenant has not paid

rent since September 2023. I find that the Landlord is entitled to an order of possession effective 2 Days, after service on the Tenant pursuant to section 55 of the *Act*. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

As the Landlord was successful with their Application, I find that they are entitled to retaining \$100.00 from the Tenant's security deposit.

### Conclusion

I grant an Order of Possession to the landlord **effective 2 (two) Days, after service of this Order on the tenant(s)**. Should the tenant(s) 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.

As the Landlord was successful with their Application, I find that they are entitled to recovering the \$100.00 filing fee paid to make the Application which can be deducted from the Tenant's security deposit.

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 8, 2024

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Residential Tenancy Branch