



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **OPC, FFL, MNRL**

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- An Order of Possession for Cause pursuant to sections 47 and 55;
- Authorization to recover the filing fee for this application from the tenant pursuant to section 72; and
- A monetary order for rent pursuant to section 67.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:40 a.m. to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord attended the hearing and testified she personally served the tenant with the Application for Dispute Resolution on July 10, 2020 and the amendment to the application on July 14, 2020. I am satisfied the tenant was served with the documents in accordance with sections 89 and 90 of the Act on those dates.

### Preliminary Issue

Rule 4.2 states that in circumstances that can be reasonably 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. The landlord sought to amend her application to seek rent up until the date of the hearing and this amendment was allowed in accordance with Rule 4.2.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Can the landlord recover the filing fee?  
Is the landlord entitled to recover rent?

### Background and Evidence

The landlord gave the following undisputed testimony. The actual landlord in this case is her mother, JP. The tenant in this case is the son of JP, the actual landlord and the brother of the person bringing on this application. For ease of reference, the actual landlord will be referred as JP while the applicant in this case will be referred to as the landlord.

The tenant moved in with JP in June of 2018 and agreed to pay rent in the amount of \$600.00. No tenancy agreement was signed when the tenant moved in. On or about August 8, 2019, JP moved into a nursing home and has been living there ever since. When she moved out, JP and the tenant verbally agreed that he would continue living in the manufactured home for \$800.00 per month.

In August of 2019, the tenant was \$210.00 short in paying rent. In September, he was \$110.00 short. He paid the full \$800.00 rent for the month of October, however the payments were late. The tenant has not paid any rent since the October payment. In evidence, the landlord provided a letter from JP that states "rent is to be paid to my daughter, [name] then deposited into my account." The letter also provides a ledger of unpaid rent and efforts made to collect it.

The landlord personally served the tenant with a One Month Notice To End Tenancy for Cause on January 19, 2020. The effective date noted on the notice was February 28, 2020 and the reason for ending the tenancy stated was:

- Tenant is repeatedly late paying rent
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property.

Under 'details of cause' the landlord wrote: non-payment of rent, see attached.

### Analysis - Order of Possession – 1 Month Notice

I am satisfied the tenant was served with the Notice on January 19, 2020 when it was personally given to him by the landlord in accordance with sections 88 and 90 of the Act.

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

- a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- b) must vacate the rental unit by that date.

The tenant has not made application pursuant to section 47(4) of the *Act* within ten days of receiving the 1 Month Notice. In accordance with section 47(5) of the *Act*, the tenant's failure to take this action within ten days led to the end of this tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by February 28, 2020. As that has not occurred, I find that the landlord is entitled to an Order of Possession effective 2 days after service. The landlord 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 landlord may enforce this Order in the Supreme Court of British Columbia.

#### Analysis – recovery of unpaid rent

Section 1 of the Residential Tenancy Act defines a tenancy agreement as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit. Although there was no signed tenancy agreement between JP and the tenant, I am satisfied there was a tenancy agreement in place. Based on the landlord's undisputed testimony, I am satisfied the tenant was required to pay \$800.00 per month rent to the landlord.

Section 26 of the Act states a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent. I find the tenant did not have any right to deduct any portion of the rent and that he is arrears of rent as follows:

<b>Item</b>	<b>Amount</b>
August 2019	\$210.00
September 2019	\$110.00
November 2019	\$800.00
December 2019 to February 2020	\$2,400.00
<b>Sub-Total</b>	<b>\$3,520.00</b>

Earlier, I found the tenancy ended on February 28, 2020. The tenant has continued to occupy the rental unit beyond that date, making the tenant what is described as an 'overholding tenant'.

*Residential Tenancy Policy Guideline #3* states that tenants are not liable to pay rent after a tenancy agreement has ended pursuant to Section 44 of the *Act*, however if tenants remain in possession of the premises (overholds), the tenants will be liable to pay occupation rent until the landlords recovers possession of the premises. I find the tenant is required to compensate the landlord for the period he remained in possession of the rental unit (overholds) for the months of March through August 2020, a period of 6 months. (6 x \$800.00 = \$4,800.00). The landlord is awarded compensation in this amount.

As the landlord was successful in her claim, the filing fee of \$100.00 will be recovered.

#### Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenants 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.

I issue a monetary order in the landlord's favour in the amount of **\$8,420.00**.

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: August 17, 2020

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Residential Tenancy Branch