



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPC, MNRL-S, MNDL-S, MNDL-S

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord filed under the Residential Tenancy Act, (the “*Act*”) to enforce a One Month Notice to End Tenancy for Cause, (the “*Notice*”) dated July 21, 2020, for a monetary order for unpaid rent, for a monetary order for compensation for damage caused by the tenant, their pets or guests to the unit, site or property, for a monetary order for compensation for my monetary loss or other money owed, permission to retain the security deposit and to recover the filing fee paid for the application. The matter was set for a conference call.

The Landlord attended the hearing and was affirmed to be truthful in their testimony. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered. Section 59 of the *Act* states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that they served the Application for Dispute Resolution to the Tenant by Canada Post registered mail, sent on August 17, 2020, a tracking number was provided as proof of service. I find that the Tenant has been duly served in accordance with the *Act*.

The Landlord was provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision

### Preliminary Matters- Related Issues

I have reviewed the Landlord's application, and I note that they have applied to enforce a notice to end tenancy as well as for several other issues. I find that some of these other issues are not related to the Landlord's request to enforce the Notice. As some of these matters do not relate directly to a possible end of the tenancy, I apply section 2.3 of the Residential Tenancy Branches Rules of Procedure, which states:

#### **2.3 Related issues**

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Therefore, I am dismissing with leave to reapply, the Landlord's claims to request a monetary order for compensation for damage caused by the tenant, their pets or guests to the unit, site or property, and for a monetary order for compensation for my monetary loss or other money owed.

I will proceed with this hearing on the Landlord's claims to enforce the Notice to end tenancy, for a monetary order for unpaid rent, permission to retain the security deposit and to recover the filing fee paid for their application.

### Issues to be Decided

- Is the Landlord entitled to an order of possession, pursuant to section 47 of the *Act*?
- Is the Landlord entitled to a monetary order for rent?
- Is the Landlord entitled to retain the security deposit?
- Is the Landlord entitled to the recovery of the filing fee for this application?

### Background and Evidence

The tenancy agreement shows that the tenancy began on May 7, 2019, as a one-year fixed term tenancy that rolled into a month to month tenancy at the end of the initial fixed term. The Landlord testified that rent in the amount of \$1,550.00 is to be paid by the first day of each month, and that they had been given a \$775.00 security deposit at

the outset of this tenancy. A copy of the tenancy agreement was submitted into documentary evidence by the Landlord.

Landlord testified that they served the Notice to the Tenant on July 21, 2020, by attaching it to the Tenant's door or other conspicuous place. The Notice indicated an end of tenancy date of August 23, 2020. A copy of the Notice was submitted into documentary evidence by the Landlord.

The Landlord testified that the Tenant had not disputed the Notice or moved out in accordance with the Notice.

The Landlord also testified that the Tenant has not paid the rent for July, August and September 2020, in the amount of \$4,650.000. The Landlord is requesting a monetary order for the outstanding rent.

### Analysis

Based on the evidence before me, the testimony of these parties, and on a balance of probabilities that:

Section 47 of the *Act* requires that upon receipt of a Notice to End Tenancy for Cause a tenant must, within ten days, dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do this, the tenant is conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice under section 47(5).

#### **Landlord's notice: cause**

**47 (5)** 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.

I find that the Tenant was deemed to have received the Notice to end the tenancy on July 24, 2020, three days after the Notice had been posted to his door. Pursuant to section 47(8) the *Act*, the Tenant had 10 days to dispute the Notice. Accordingly, the Tenant had until August 4, 2020, the first business day following the expiry of the

dispute period, to dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

In this case, I find that the Tenant did not dispute the Notice to End Tenancy and that the time for doing so has expired. Therefore, pursuant to section 47(5a) I find that the Tenant is conclusively presumed to have accepted the Notice and that the tenancy would end in accordance with that Notice.

Section 55(2b) of the *Act* states that a landlord may request an order of possession if a notice to end the tenancy has been given by the landlord and the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

**Order of possession for the landlord**

**55 (2)** A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

(b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired

I have reviewed the Notice to End Tenancy, and I find the Notice complies with section 52 of the *Act*.

Therefore, I grant the Landlord an **Order of Possession** effective **2 days** after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that the costs of such enforcement are recoverable from the tenant.

As for the Landlord's claim for a monetary order for unpaid rent, section 26(1) of the *Act* states that a tenant must pay the rent when it is due under the tenancy agreement.

***Rules about payment and non-payment of rent***

**26 (1)** *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.*

*(2) A landlord must provide a tenant with a receipt for rent paid in cash.*

*(3) Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not*

*(a) seize any personal property of the tenant, or  
(b) prevent or interfere with the tenant's access to the tenant's personal property.*

*(4) Subsection (3) (a) does not apply if  
(a) the landlord has a court order authorizing the action, or  
(b) the tenant has abandoned the rental unit and the landlord complies with the regulations.*

In this case, I accept the undisputed testimony of the Landlord that the rent has not been paid for July, August and September 2020. I find that the Tenant breached section 26 of the *Act* when they did not pay the rent as required under the tenancy agreement.

Therefore, I find that the Landlord has established an entitlement to a monetary award in the amount of \$4,650.00, comprised of \$1,550.00 in rent for July 2020, \$1,550.00 in rent for August 2020, and \$1,550.00 in rent for September 2020. I grant permission to the Landlord to retain the \$775.00 security deposit the Landlord is holding for this tenancy in partial satisfaction of this award.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this hearing.

I grant the Landlords a monetary order of \$3,975.00, consisting of \$4,650.00 in rent, \$100.00 in the recovery of the filing fee for this hearing, less the \$775.00 security deposit the Landlord is holding for this tenancy.

Conclusion

I grant an **Order of Possession** to the Landlord effective not later than **2 days** after service upon the Tenant. The Tenant must be served with this Order. 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.

I find for the Landlord under sections 26, 65 and 72 of the Act. I grant the Landlord a **Monetary Order** in the amount of **\$3,975.00**. The Landlord is provided with this Order in the above terms, and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: September 28, 2020

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Residential Tenancy Branch