



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **FFL, OPRM-DR, OPR-DR FFL, OPL, MNRL, OPN**

### Introduction

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

- An order of possession pursuant to section 55;
- A monetary order for unpaid rent pursuant to section 67; and
- Authorization to recover the filing fee for these applications from the tenant pursuant to section 72.

The tenant did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notices of Hearing was confirmed to contain the correct hearing information. The landlord attended, and was represented by their agent (the "landlord") who was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that they served the tenant with each of the Notices of Hearing and all evidence personally on October 21, 2020 and December 1, 2020 respectively in the presence of a witness. Based on the undisputed testimonies I find the tenant served with the landlord's materials in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing the landlord corrected some typographic and entry errors in their application providing the correct name of the applicant and the correct rental address. The corrected information is used in the style of cause for this decision.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession as sought?  
Is the landlord entitled to a monetary award?  
Is the landlord entitled to recover the filing fees from the tenant?

Background and Evidence

This periodic tenancy began in March 2017. The monthly rent is \$1,650.00 payable on the 15<sup>th</sup> of each month. A security deposit of \$825.00 was collected and is still held by the landlord. While the copy of the tenancy agreement submitted into evidence states that a pet damage deposit of \$825.00 is also payable, the landlord testified that it was not collected and they only hold a security deposit for this tenancy.

The landlord issued a 2 Month Notice to End Tenancy for Landlord's Use dated August 19, 2020 with an effective date of November 15, 2020. The reason given on the notice is that the landlord or a close family member intends to occupy the rental unit. The landlord served the notice personally on the tenant on September 1, 2020 in the presence of a witness. The landlord submitted a signed Proof of Service of the 2 Month Notice. The landlord is not aware of the tenant filing an application to dispute the notice.

The landlord testified that the tenant has failed to pay full rent owing during the tenancy and there is a rental arrear of \$5,010.00 as at the date of the hearing. The landlord gave evidence that they have served the tenant with a valid Repayment Plan for the rental payments missed during the Covid19 state of emergency and that there have been rent that has not been paid for periods outside of the state of emergency.

Analysis

I accept the undisputed evidence of the landlord that they served the tenant with the 2 Month Notice to End Tenancy dated August 19, 2020 on September 1, 2020. I find that the 2 Month Notice was served on that date in accordance with section 88(a) of the *Act*.

Section 49 of the *Act* provides that a tenant may dispute a notice by making an application for dispute resolution. If a tenant does not make an application to dispute the notice they are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice. In the present case I accept the evidence of the landlord that the tenant has not filed an application to dispute the 2 Month Notice and

consequently find that the tenant is conclusively presumed to have accepted that the tenancy ends on November 15, 2020 the effective date of the notice.

I find that the notice complies with the form and content requirements of section 52 of the *Act* as it is signed and dated by the landlord's representative, provides the address of the rental unit and the reason for the tenancy to end. I accept the landlord's testimony that they intend to occupy the rental unit. Accordingly, I find the landlord is entitled to an Order of Possession. As the effective date of the notice has passed, I issue an Order effective 2 days after service on the tenant.

I accept the evidence of the landlord that there is a rental arrear of \$5,010.00 as at the date of the hearing. I accept the landlord's testimony that the rental arrear arises from both affected rent arising from the period of March 18, 2020 and August 17, 2020 as defined in *The COVID-19 (Residential Tenancy Act and Manufactured Home Park Tenancy Act) (No. 2) Regulation* ("C19 Tenancy Regulation") for which a valid repayment plan was issued and other periods. I accept the testimony of the landlord that the tenant has failed to pay the installments as required under the repayment plan and that the total amount of the arrear, as at the date of the hearing January 26, 2021, is \$5,010.00. Accordingly, I issue a monetary award in the landlord's favour in that amount.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

As the landlord was successful in their application, they are entitled to recover their filing fee. While the landlord has filed two separate applications and paid two filing fees I find that the matters seek the same relief and ought to have been filed as one application. Consequently, I allow the landlord to recover \$100.00 the cost of one filing from the tenant.

### Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. Should the tenant or any occupant 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 \$4,285.00, allowing the landlord to recover the unpaid rent and filing fee and to hold the security deposit for this tenancy. 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: January 26, 2021

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Residential Tenancy Branch