



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPC, MNSD, MNDC, FF

### 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 section 55 for the repeated late payment of rent;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 9:42 a.m. in order to enable her to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord's agent (the landlord) attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that he handed the tenant a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) on July 6, 2012. The landlord testified that he sent the tenant a copy of the landlord's dispute resolution hearing package by registered mail on August 14, 2012. He provided the Canada Post Tracking Number to confirm this mailing. He also testified that he had discussed this application with the tenant following her receipt of the dispute resolution hearing package and understood that she had received notice of this hearing based on their conversation. I am satisfied that the landlord has served the above documents and the landlord's written evidence package in accordance with the *Act*.

At the commencement of the hearing, the landlord clarified that the application for a monetary award of \$335.00 was submitted in anticipation of the tenant's possible failure to pay all of her rent prior to this hearing. As the tenant has made her August and September 2012 monthly payments on time, he said that there was no need to seek a monetary award for losses arising out of this tenancy at this time. He withdrew his application for a monetary award, but asked for recovery of the filing fee from the tenant. The landlord's application for a monetary award for losses arising out of this tenancy is withdrawn.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for cause? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This periodic tenancy commenced on June 1, 2011. Monthly rent is set at \$670.00, payable in advance on the first of each month, plus hydro. The landlord continues to hold the tenant's \$335.00 security deposit paid on or about June 6, 2011.

The landlord entered oral and written evidence that the tenant has been late in paying her rent four times since the fall of 2011. He entered into written evidence copies of 10 Day Notices to End Tenancy for Unpaid Rent issued to the tenant for October 2011, December 2011, May 2012 and July 2012. Although the tenant paid her rent in full on each of these occasions after receiving these notices, he maintained that this established a pattern of repeated late payment of rent. He requested an Order of Possession for cause on the basis of this pattern of repeated late payment of rent.

Analysis

Residential Tenancy Policy Guideline #38 provides the following guidance regarding the circumstances whereby a landlord may end a tenancy where the tenant is repeatedly late paying rent.

*Three late payments are the minimum number sufficient to justify a notice under these provisions...*

*However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be "repeatedly" late. A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision...*

There is clear evidence that the written tenancy agreement requires the tenant to pay all of the rent by the first of each month. The evidence presented indicates that the tenant has been late in paying her rent on at least three occasions. I am satisfied that there is a pattern of late payment of rent during this tenancy. Over a 10-month period, the tenant has been late paying her rent on four occasions. After her last late payment, the landlord took prompt action to seek an end to this tenancy for cause.

Based on the landlord's undisputed evidence, I am satisfied that the landlord had sufficient grounds to issue the 1 Month Notice and obtain an end to this tenancy for

cause. 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 her tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by August 31, 2012. As that has not occurred and the landlord has accepted a payment from the tenant for September 2012, I find that the landlord is entitled to an Order of Possession to take effect by 1:00 p.m. on September 30, 2012. The landlord will be given a formal Order of Possession which must be served on the tenant.

As the landlord has been successful in this application, I allow the landlord to recover the \$50.00 filing fee from the tenant, an amount which will be deducted from the security deposit retained by the landlord.

#### Conclusion

The landlord is provided with a formal copy of an Order of Possession effective by 1:00 p.m. on September 30, 2012. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I allow the landlord to recover the \$50.00 filing fee for this application. To implement this decision, I order that the landlord retain \$50.00 from the tenant's security deposit. The remaining value of the tenant's security deposit is now set at \$285.00.

The landlord's application for a monetary award for losses arising out of this tenancy is withdrawn.

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 13, 2012

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Residential Tenancy Branch