



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, MNR, MNSD, MNDC, FF

### Introduction

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

- an order of possession for cause pursuant to section 55;
- a monetary order for unpaid rent, and 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 her filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1019 in order to enable the tenant to connect with this teleconference hearing scheduled for 0930. The landlord attended the hearing and was given a full opportunity to be heard.

### Preliminary Issue – Service

The landlord testified that she served the tenant with the dispute resolution package on 9 June 2015 by posting the package to the tenant's door.

Service by posting the dispute resolution package is contemplated for the purposes of an order of possession (subsection 89(2) of the Act), but not contemplated for the purposes of a monetary order (subsection 89(1) of the Act). On the basis of this evidence, I am satisfied that the tenant was deemed served with the dispute resolution package pursuant to subsection 89(2) and paragraph 90(c) of the Act. This means that I can hear the landlord's application for an order of possession, but cannot hear the landlord's application for a monetary order. As such, the landlord's application for a monetary order is dismissed with leave to reapply. Leave to reapply is not an extension of any applicable time limit.

The landlord testified that she served the tenant with the 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) on 28 May 2015 by posting the document to the tenant's door. The landlord testified that she was accompanied by a friend AJ. On the basis of this evidence, I am satisfied that the tenant was deemed served with the 1 Month Notice pursuant to sections 88 and 90 of the Act on 31 May 2015.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession for cause?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the landlord, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began 1 September 2013. The parties entered into a written tenancy agreement on 13 August 2013. Current monthly rent is \$1,500.00 and is due on the first.

On 28 May 2015, the landlord issued the 1 Month Notice to the tenant. The 1 Month Notice set out an effective date of 30 June 2015. The 1 Month Notice set out that it was being delivered as the tenant was repeatedly late paying rent.

The landlord provided me with evidence that document the tenant's late rent payments. On the basis of this evidence, I find that the tenant made the following late payments:

- rent due 1 February 2014 was paid in full on or after 28 February 2014;
- rent due 1 March 2014 was paid in full on or after 5 March 2014;
- rent due 1 April 2014 was paid in full on or after 7 April 2014;
- rent due 1 September 2014 was paid in full on or after 15 September 2014;
- rent due 1 October 2014 was paid in full on or after 8 October 2014;
- rent due 1 November 2014 was paid in full on or after 9 November 2014;
- rent due 1 December 2014 was paid in full on or after 9 December 2014;
- rent due 1 February 2015 was paid in full on or after 6 February 2015;
- rent due 1 March 2015 was paid in full on or after 26 March 2015;
- rent due 1 April 2015 was paid in full on or after 7 April 2015; and
- rent due 1 May 2015 was paid in full on or after 28 May 2015.

The landlord testified that she has not received rent payment for July.

### Analysis

Paragraph 47(1)(b) of the Act permits a landlord to terminate a tenancy by issuing a 1 Month Notice in cases where a tenant has been repeatedly late paying rent. *Residential Tenancy Policy Guideline*, “38. Repeated Late Payment of Rent” provides that, a minimum of three late payments is considered “repeatedly” late for the purposes of paragraph 47(1)(b) of the Act.

The landlord has provided uncontested and sworn testimony that the tenant has paid late rent on at least eleven occasions. Furthermore, and pursuant to subsection 47(5), the 1 Month Notice states that the tenant had ten days, from the date of service of that notice, to apply for dispute resolution or the tenant would be presumed to have accepted that the tenancy would end on the effective date of the 1 Month Notice. The tenant did not apply to dispute the 1 Month Notice within ten days from the date of service. For the reasons outlined above, I find that the 1 Month Notice is validly issued. As the 1 Month Notice is valid, the landlord was entitled to possession of the rental unit on 30 June 2015. As this date has now passed, the landlord is entitled to an order of possession effective two days from service on the tenant.

### Conclusion

The landlord’s monetary application is dismissed with leave to reapply. The landlord is provided with a formal copy of an order of possession. 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.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: July 30, 2015

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Residential Tenancy Branch