



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MONARCH PROPERTIES LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC, MNR, FF, MT, CNC, OLC, LRE

### Introduction

This hearing was scheduled to consider cross-applications pursuant to the *Residential Tenancy Act* (the “*Act*”).

The tenant seeks

- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 66;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

The landlord seeks:

- an Order of Possession for Cause pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- recovery of the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The corporate landlord was primarily represented by its agent, TJ (the “landlord”).

As both parties were in attendance I confirmed that there were no issues with service of the landlord's 1 Month Notice, the respective applications for dispute resolution or either party's evidentiary materials. The parties confirmed receipt of one another's materials. In accordance with sections 88 and 89 of the *Act*, I find that the parties were duly served with copies of the landlord's 1Month Notice, their respective applications and their respective evidence.

At the outset of the hearing, the landlord made an application requesting to amend the monetary amount of the claim sought. The landlord indicated that since the application was filed the tenant has failed to pay the April rent amount and that the total arrears including rent owing and

late fees as of the date of the hearing is \$3,040.00. As additional rent becoming due is reasonably foreseeable, pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure I amend the landlord's Application to increase the landlord's monetary claim from \$2,970.00 to \$3,040.00.

#### Preliminary Issue – Tenant's Application

The landlord testified that the 1 Month Notice was served on the tenant by posting on the rental unit door on January 26, 2017. Pursuant to sections 88 and 90 of the *Act*, the 1 Month Notice is deemed served on the tenant on January 29, 2017, three days after posting.

The tenant testified that she was hospitalized on February 2, 2017 and was unable to file her application to cancel the landlord's 1 Month Notice in a timely manner. The tenant filed her application to dispute the 1 Month Notice on March 14, 2017.

Section 66 of the *Act* provides that a time limit established in the *Act* may only be extended in exceptional circumstances. The section further provides that:

66(3) The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

The landlord's 1 Month Notice has an effective date of February 28, 2017. Therefore, pursuant to section 66(3) of the *Act* I cannot extend the time limit for the tenant to make an application on March 14, 2017 as that would be beyond the effective date. Accordingly, I find that the tenant has not filed her application to dispute the landlord's 1 Month Notice within the time period allowed and dismiss her application.

#### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for Cause?

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to recover the filing fee for this application from the tenant?

#### Background and Evidence

The parties agreed on the following facts. The tenant began residing in the rental unit in October, 1998. The landlord purchased the rental building from the previous landlord in 2004 and has been managing the rental unit since that time. The tenancy is currently month-to-month with a monthly rent of \$950.00 payable on the first. A security deposit of \$310.00 was paid by the tenant at the start of the tenancy and is still held by the landlord.

The landlord testified that the tenant has frequently been late paying the monthly rent. The landlord said that the tenant was late in paying rent for July, August, September, October and November of 2016. The landlord said that the tenant has only paid a portion of the rent owing

for January, 2017 and has not made any payment for February, March and April, 2017. The landlord testified that the total arrears, including late fees and NSF charges, is \$3,040.00 as at the date of the hearing, April 18, 2017.

The tenant did not dispute the amount of the arrears or the late payments. The tenant testified that her unstable employment situation in 2016 prevented her from making regular rent payments in a timely manner. She said that she had medical issues and was hospitalized for a time in 2017 which further impacted her ability to pay the rent. The tenant also mentioned deficiencies in the rental unit and described the building as “long-neglected”.

### Analysis

In accordance with subsection 47(4) of the *Act*, the tenant may file an application for dispute resolution within ten days of receiving the 1 Month Notice. Where a tenant applies to dispute a 1 Month Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 1 Month Notice is based. In the present case, as I have dismissed the tenant's application to file a dispute of the 1 Month Notice outside of the allowed time, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the 1 Month Notice. Even if this were not the case the parties have provided undisputed evidence of the parties that the tenant has been late in paying the rent, more than 3 times during a six month period. Accordingly, I find that the tenancy ended on the effective date of the 1 Month Notice, February 28, 2017. Therefore, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*.

I accept the evidence of the parties that the rent has not been paid in full for the months of January, February, March and April, 2017. I accept the undisputed evidence of the parties that the total amount of rental arrear is \$3,040.00 as at April 18, 2017, the date of the hearing. Therefore, I issue a monetary award to the landlord for unpaid rent and late charges of \$3,040.00 as at April 18, 2017, the date of the hearing, pursuant to section 67 of the *Act*.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

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 of \$310.00 in partial satisfaction of the monetary award issued in the landlord's favour.

### Conclusion

The tenant's application is dismissed.

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenant 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 \$2,830.00 under the following terms, which allows the landlord to recover unpaid rent, late fees, NSF charges, and the filing fee for their application:

Item	Amount
Unpaid Rent January	\$50.00
NSF Charge	\$40.00
Unpaid Rent February	\$950.00
Unpaid Rent March	\$950.00
Unpaid Rent April	\$950.00
Late Fee (\$25 x 4 months)	\$100.00
Less Security Deposit	-\$310.00
Filing Fees	\$100.00
<b>Total Monetary Order</b>	<b>\$2,830.00</b>

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: April 18, 2017

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Residential Tenancy Branch