



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes FF MND MNDC MNR MNSD OPC CNC FF MNSD MT O RR

### Introduction

This hearing was convened in response to applications by both the tenant and the landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The application from the corporate landlord requested:

- an Order of Possession for repeated late payment of rent pursuant to section 47 of the *Act*;
- a Monetary Order pursuant to section 67 of the *Act* for unpaid rent and for money owed for damage or loss under the *Act*;
- authorization to retain the security deposit pursuant to section 72 of the *Act*;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72 of the *Act*.

The application from the tenant requested:

- a cancellation of the 1 Month Notice to End Tenancy for repeated late payment of rent pursuant to section 47 of the *Act*;
- a return of the filing fee pursuant to section 72 of the *Act*;
- a return of her security deposit pursuant to section 38 of the *Act*;
- more time to make an application pursuant to section 66 of the *Act*;
- a reduction in rent for repairs, services or facilities agreed upon but not provided pursuant to section 65 of the *Act*; and
- other unspecified relief.

The tenant, and the landlord's agent, D.D. (the “landlord”) participated in the conference call hearing. They were both given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that a 1 Month Notice to End tenancy for Cause (“1 Month Notice”) was posted on the tenant's door on April 26, 2017. The tenant acknowledged receiving this notice. Pursuant to sections 88 and 90 of the *Act* the tenant is deemed to have been served with this 1 Month Notice on April 29, 2017.

Both parties acknowledged receipt of each other's applications for Dispute Resolution. Pursuant to section 89 of the *Act* the parties are found to have been duly served with each other's applications for Dispute Resolution.

At the outset of the hearing the landlord advised that she wished to amend her application for a Monetary Order. She stated that she wished to lower the amount sought to \$2,027.12. Pursuant to section 64(3)(c), I have amended the landlord's application to reflect this request.

Issue(s) to be Decided

Can the tenant cancel a 1 Month Notice? If not, is the landlord entitled to an Order of Possession?

Are either party entitled to a Monetary Order?

Can the landlord retain the security deposit against any monetary award given?

Should the tenant be granted more time to make an application?

Should the rent be reduced?

Are either party entitled to a return of the filing fee?

Background and Evidence

The tenant testified that this tenancy began on August 1, 2015. Rent was \$985.00 at the outset of the tenancy and rose to its current amount of \$1,013.00 over the duration of the tenancy. A deposit of \$985.00, security (\$492.50) and pet (\$492.50) continues to be held by the landlord.

The landlord explained that the tenant was issued a 1 Month Notice for Cause because of repeated late payments of rent. Specifically, the landlord stated that the tenant was late with rent in January, February, March, and April 2017. The tenant explained she had switched from automatic, electronic withdrawals to paying the rent by cheque. She attributed these late payments to this change in the manner with which she paid rent. As part of her evidentiary package, the tenant submitted banking statements demonstrating the dates on which rent was withdrawn.

The landlord explained that in addition to an Order of Possession, she sought a monetary award of \$2,027.12 in reflection of unpaid rent for May and June 2017. The tenant acknowledged that rent remained unpaid for this period of time; however, she explained that she had been instructed by an information officer at the *Residential Tenancy Branch* whom she had spoken to on the phone, that rent was not due while her application was awaiting arbitration.

The tenant stated that she sought a monetary award of \$950.00 in the form of a rental reduction for repairs, services or facilities agreed upon but not provided. When asked to describe this portion of her application, the tenant explained that she sought this money as relief for the pain and suffering she has experienced as a result of the stress associated with this dispute. The tenant explained that she was presented with a rental increase in August 2016 and could not afford a further increase. She asked that the rent be reduced to its former rate.

### Analysis

Evidence was presented during the course of the hearing by the landlord that rent was late for the months of January, February, March, and April 2017. Section 47(1)(b) of the *Act* explains that a landlord may end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent.

*Residential Tenancy Policy Guideline #38* provides guidance on what is to be considered when examining the issue of repeated late payments of rent. It states:

Three payments are the minimum number sufficient to justify a notice under these provisions...in exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent...whether the landlord was inconvenienced or suffered damage as the result of any of the late payments is not a relevant factor in the operation of this provision.

While I sympathize with the tenant, I must follow the provisions related to an Order of Possession, pursuant to section 47 of the *Act* as described above. The tenant contended that she had been subject to a banking error that caused her to have funds unexpectedly withdrawn from her account, and that she attempted to pay rent by cheque. This is an understandable issue; however, when this error was first identified, the tenant should have immediately addressed it. The evidentiary package submitted by the tenant does not contain any letters from the bank confirming the issues the tenant described regarding the banking error, nor does the account statement demonstrate evidence of wrong doing.

Section 26(1) of the *Act* states that rent must be paid when it is due under the tenancy agreement. In this case, rent was due on the first of the month. I find that based on a lack of evidence indicating a banking error, along with the tenant's acknowledgement that rent was paid late on four occasions that the landlord is entitled to an Order of Possession.

The tenant is unsuccessful in cancelling the landlord's 1 Month Notice for Cause and a 2 Day Order of Possession will be issued to the landlord.

In addition to an Order of Possession, the landlord has applied for a Monetary Order of \$2,027.12. This amount is in satisfaction for unpaid rent for the months of May and June 2017.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove entitlement to a claim for a monetary award

During the course of the hearing, the tenant acknowledged not paying rent for the months of May and June 2017. She explained that she had been instructed by a woman working for the *Residential Tenancy Branch* that rent did not need to be paid while her matter was awaiting arbitration. The *Act* provides no such relief for persons, and section 26 of the *Act* states that "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." No evidence was presented at the hearing that the tenant had a right under the *Act* to deduct all or a portion of the rent. I find that rent remains unpaid for the months of May and June 2017, and that the tenant is responsible for this outstanding amount. The landlord is successful in her application for a monetary award.

Using the offsetting provisions contained within section 72 of the *Act*, the landlord may withhold the tenant's security and pet deposits as relief against the monetary award granted.

As the landlord was successful in her application, she may recover the \$100.00 filing fee from the tenant.

The tenant has applied for a reduction in rent for repairs, services or facilities agreed upon but not provided to the tenant. As this tenancy will not be continuing and is ending 2 days after service of the Order of Possession, the tenant's application for a reduction in rent is dismissed.

During the hearing the tenant explained that she sought some relief for the pain and suffering she has suffered as a result of this tenancy. I found no indication that the tenant had applied for a Monetary Order pursuant to section 67 of the *Act*. As no application for a monetary award was served on the landlord, I make no decision concerning this matter.

### Conclusion

The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

The landlord will be granted a Monetary Order of \$1,142.12.

Item	Amount
Unpaid Rent for May 2017	\$1,013.00
Unpaid Rent for June 2017	1,013.00
Return of Filing Fee	100.00
Less Deposits	(-985.00)
<b>Total =</b>	<b>\$1,141.00</b>

The landlord is provided with formal Orders in the above terms. Should the tenant fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

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: June 29, 2017

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Residential Tenancy Branch