



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FF, MNSD, OPC

### Introduction

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. An Order for Possession for cause.
- b. A monetary order in the sum of \$250 for damages
- c. An Order to retain the security deposit.
- d. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the one month Notice to End Tenancy was personally served on the Tenant by attaching it to the door on March 3, 2017. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the Tenant on May 5, 2017. The tenant did not dispute that she was served with these documents. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to an Order for Possession?
- b. Whether the landlord is entitled to A Monetary Order and if so how much?
- c. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- d. Whether the landlord is entitled to recover the cost of the filing fee?

### Background and Evidence

The parties entered into a tenancy agreement that provided that the tenancy would start on July 1, 2014. The rent is \$375 per month payable in advance on the last day of the previous month. The tenant paid a security deposit of \$250 at the start of the tenancy.

Analysis - Order of Possession:

I determined the landlord was entitled to an Order for Possession. On March 3, 2017 the tenant was served with a one month Notice to End Tenancy that set the end of tenancy for April 30, 2017. The Tenant(s) have not made an application to set aside the Notice to End Tenancy and the time to do so has expired. In such situations the Residential Tenancy Act provides the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date. The tenant stated she was unaware that she was required to dispute the Notice. The Notice to End Tenancy provides information of the requirement of the tenant to make an application.

Policy Guideline #36 includes the following:

**“Notice to End**

**Application for Arbitration Filed After Effective Date**

An arbitrator may not extend the time limit to apply for arbitration to dispute a Notice to End if that application for arbitration was filed after the effective date of the Notice to End.

For example, if a Notice to End has an effective date of 31 January and the tenant applies to dispute said Notice to End on 1 February, an arbitrator has no jurisdiction to hear the matter ***even where the tenant can establish grounds that there were exceptional circumstances***. In other words, once the effective date of the Notice to End has passed, there can be no extension of time to file for arbitration.”

Accordingly, I determined the landlord was entitled to an Order of Possession.

The tenant wants to remain the rental unit. The representatives of the landlord stated they have attempted to work with the Tenant but have been unsuccessful and they require an Order of Possession. The landlord agreed however that I could set the Order of Possession for July 24, 2017 which would allow for the tenant to find alternative accommodation. However, this was conditional on the tenant paying the rent in full for June in the sum of \$375 and rent for the period July 1, 2017 to July 24, 2017 in the sum of \$290 when due. The tenant agreed to do so.

I granted an Order of Possession effective July 24, 2017.

The tenant must be served with this Order of Possession as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

Analysis - Monetary Order and Cost of Filing fee:

I dismissed the landlord's application for a monetary order with liberty to re-apply. I determined it was premature for the landlord to make such a claim as the tenant is still in the rental unit and the landlord is not able to prove a loss at this stage.

However, the landlord is entitled to recover the cost of the filing fee in the sum of \$100.

I ordered the tenant pay to the landlord the sum of \$100 such sum may be deducted from the security deposit.

Conclusion:

I granted an Order of Possession effective July 24, 2017. I dismissed the claim for a monetary order with liberty to re-apply. I ordered the tenant pay to the landlord the sum of \$100 such sum may be deducted from the security deposit.

**This decision is final and binding on both parties.**

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 14, 2017

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Residential Tenancy Branch