



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, MNR, MNDC, MNSD, FF

### Introduction

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

- an Order of Possession for cause pursuant to section 55;
- a Monetary Order for unpaid rent and damages pursuant to section 67;
- authorization to retain all or part of the security deposit for this tenancy pursuant to section 38; and
- authorization to recover the filing fee for the application from the tenant pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 15 minutes. The landlord attended and was 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 (the "1 Month Notice"), dated May 18, 2017 was personally served on the tenant on that date. In accordance with sections 88 of the *Act*, I find that the tenant was served with the landlord's 1 Month Notice on May 18, 2017.

The landlord testified that the landlord's application for dispute resolution dated July 4, 2017 was served on the tenant with the evidentiary materials by registered mail sent on that same date. The landlord provided a Canada Post tracking numbers as evidence of service. I find that the tenant was deemed served with the landlord's application package in accordance with sections 88, 89 and 90 of the *Act*, on July 9, 2017, five days after mailing.

Issue(s) to be Decided

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

Is the landlord entitled to a monetary order as claimed?

Is the landlord entitled to retain all or a portion of the security deposit for this tenancy?

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

Background and Evidence

The landlord provided undisputed testimony regarding the following facts. This periodic tenancy began in December, 2016. The current monthly rent is \$850.00 payable on the first of each month. A security deposit of \$425.00 was collected at the start of the tenancy and is still held by the landlord. The tenant continues to occupy the rental unit.

The landlord gave evidence that the tenant has disturbed other tenants in the rental building through excessive noise. The landlord said that the tenant has caused damage to the rental unit and believes that repairs will need to be performed after the tenancy ends. The landlord estimates that repairs may cost approximately, \$3,000.00. The landlord testified that the tenant has failed to pay the monthly rent for the months of July and August, 2017 and the arrears is \$1,700.00 as of the date of the hearing.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend.

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within 10 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. I find that the tenant has failed to file an application for dispute resolution within the 10 days of service granted under section 47(4) of the *Act*. Accordingly, I find that the tenant is conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ends on the corrected effective date of the 1 Month Notice, June 30, 2017.

I find that the landlord's 1 Month Notice meets the form and content requirements of section 52 of the *Act* as it is in the approved form and clearly identifies the parties, the address of the rental unit, the effective date of the notice and the reasons for ending the tenancy. Therefore, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*. As the effective date of the 1 Month Notice has passed, I issue a 2 day Order of Possession.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. 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 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.

I accept the landlord's evidence that the tenant has failed to pay rent for the months of July and August and the tenancy is in arrears by \$1,700.00. Accordingly, I issue a monetary award in the amount.

I find that it is premature to make a finding regarding damage to the rental unit as the tenant has the right to perform repairs prior to the end of the tenancy. I dismiss this portion of the landlord's claim with leave to reapply.

As the landlord's application was successful he is also entitled to recover the filing fee for this application from the tenants.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's \$425.00 security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

### Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenants or any occupant 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 \$1,375.00 under the following terms, which allows the landlord to recover unpaid rent for the months of July and August, 2017, and the filing fee for their application, and to retain the tenant's security deposit:

Item	Amount
Unpaid Rent July	\$850.00
Unpaid Rent August	\$850.00
Filing Fee Recovery	\$100.00
Less Security Deposit	-\$425.00
<b>Total Monetary Order</b>	<b>\$1,375.00</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.

The balance of the landlord's monetary claim is dismissed with leave to reapply.

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: August 17, 2017

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Residential Tenancy Branch