



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes            OPC, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Landlord under the *Residential Tenancy Act* (the “Act”), for a Monetary Order for unpaid rent, recovery of the filing fee, and other money owed, retention of the security deposit paid by the Tenant to offset any money owed, and for an Order of Possession.

The hearing was convened by telephone conference call and was attended by the Landlord, who provided affirmed testimony. The Tenant did not attend. The Landlord was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the respondent must be served with a copy of the Application and Notice of Hearing. As the Tenant did not attend the hearing, I confirmed service of documents as explained below.

The Landlord testified that the Application and Notice of Hearing were sent to the Tenant by registered mail on September 16, 2017, and provided a copy of the registered mail receipt in the documentary evidence before me. As a result, I find that the Tenant was deemed served with these documents on September 21, 2017, five days after they were sent by registered mail.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer only to the relevant facts and issues in this decision.

### Issue(s) to be Decided

Is the Landlord entitled to a Monetary Order for unpaid rent, recovery of the filing fee, and other money owed, pursuant to section 67 of the *Act*?

Is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

### Background and Evidence

The tenancy agreement in the documentary evidence before me indicates that the tenancy began April 1, 2016, and that rent in the amount of \$1,050.00 is due on the first day of each month. The Tenancy agreement also indicates that a security deposit in the amount of \$525.00 was paid by the Tenant and the Landlord testified that they still hold this deposit.

The Landlord testified that they are seeking an Order of Possession based on the following Notices to End Tenancy, neither of which were disputed by the Tenant, and copies of which were submitted for my consideration:

- A One Month Notice to End Tenancy for Cause (the "One Month Notice"), dated August 15, 2017, with an effective vacancy date of September 30, 2017; and
- A One Month Notice, dated August 20, 2017, with an effective vacancy date of September 30, 2017.

The Landlord testified that the One Month Notice dated August 15, 2017, was personally served on the Tenant on August 16, 2017, and that the One Month Notice dated August 20, 2017, was personally served on the Tenant on August 24, 2017.

The Landlord testified that on October 31, 2017, the Tenant returned some but not all of the keys to the rental unit and that neither the Tenant nor their vehicle have been seen since. However, the Landlord stated that some belongings still remain in the unit, all of which appear to have been abandoned and of little or no value. As a result, the Landlord stated that they are still seeking an Order of Possession for the rental unit.

The Landlord testified that although they sought \$2,100.00 in outstanding rent in their Application, the Tenant has since made some payments, and as a result, the Landlord testified that the Tenant currently owes only \$550.00 in outstanding rent. Further to this, the Landlord stated that they are seeking a Monetary Order for \$12.00; the cost of the registered mail sent to the Tenant as part of this Application.

### Analysis

Section 47 of the *Act* states the following with regards to a Notice to End Tenancy for cause:

#### **Landlord's notice: cause**

**47 (4)** A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

I have reviewed all relevant documentary evidence and oral testimony and in accordance with section 88 of the *Act*, I find that the Tenant was personally served with the One Month Notice dated August 15, 2017, on August 16, 2017. I also find that the Tenant was obligated to pay rent in the amount of \$1,050.00, on time and in full each month.

As there is no evidence before me to the contrary, I find that the Tenant did not dispute the One Month Notice within the 10 day period granted under section 47(4) of the *Act*, and I therefore find that the Tenant is conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ended on September 30, 2017, the effective date of the One Month Notice. As a result, I find that the Landlord is entitled to an Order of Possession.

Based on the undisputed testimony of the Landlord, I also find that the Tenant owes the Landlord \$550.00 in unpaid rent. Pursuant to section 72 of the *Act*, the Landlord is entitled to retain the security deposit paid by the Tenant in full, to offset this amount. The Landlord is also entitled to recovery of the \$100.00 filing fee. As a result, the Landlord is entitled to a Monetary Order in the amount of \$125.00; \$550.00 in unpaid rent, plus the \$100.00 filing fee, less the \$525.00 security deposit.

Although the Landlord also made a claim for the recovery of the registered mail fee, I find that this is not a fee that is recoverable under the *Act* and therefore the Landlord's claim for this amount is dismissed.

As I have already found above that the tenancy is ended in relation to the One Month Notice dated August 15, 2017, I find that I do not need to consider the One Month Notice dated August 20, 2017, and I have made no findings of fact or law in relation to it.

As the Landlord testified that the Tenant may have abandoned belonging in the rental unit, I also caution the Landlord to treat any such belongings in accordance with the *Act* and *Regulation*.

### Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and 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 Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$125.00. The Landlord is provided with this Order in the above terms and 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*. At the request of the Landlord, copies of the decision and orders will be sent to the address provided by the Landlord in the hearing.

Dated: November 7, 2017

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Residential Tenancy Branch