



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PROJECT 24 GARDEN APARTMENTS LTD. C/O FIRSTSERVICE  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC, MNR, MNSD, FF

### Introduction

This hearing was convened by conference call in response to the Landlord's Application for Dispute Resolution (the "Application") requesting an Order of Possession based on a notice to end tenancy for cause. The Landlord also applied for a Monetary Order for: unpaid rent; to keep the Tenant's security deposit; and to recover the filing fee.

An agent for the company owner of the rental unit (the "Landlord's agent") appeared for the hearing and provided affirmed testimony as well as documentary evidence in advance of the hearing. The building manager also appeared but did not provide any evidence. There was no appearance for the Tenant during the 12 minute hearing or any prior submission of evidence. Therefore, I turned my mind to the service of documents.

The Landlord's agent testified that she served the Tenant with a copy of the Application and the Notice of Hearing documents by registered mail on August 30, 2017. The Landlord provided the Canada Post tracking number into oral evidence to verify this method of service, which is detailed on the front page of this Decision. The Landlord's agent testified that the documents had been signed and received for by the Tenant on August 31, 2017. Based on the undisputed evidence before me, I find the Tenant was served with the required documents for this hearing pursuant to Section 89(1) (c) of the *Residential Tenancy Act* (the "Act").

### Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for unpaid rent?
- Is the Landlord entitled to keep the Tenant's security deposit in partial satisfaction of the monetary claim for unpaid rent?

### Background and Evidence

The Landlord's agent testified that this tenancy started on April 30, 2013 for a fixed term of one year after which point the tenancy continued on a month to month basis thereafter. A written tenancy agreement was signed and the Tenant paid a security deposit of \$775.00 which the Landlord currently holds in trust. No interest is payable on this amount.

Rent for this tenancy started off at \$1,550.00. During the tenancy, the rent increased to \$1,585.00, which was then again increased to \$1,630.00. The Landlord's agent testified that the rent was set to increase to \$1,690.00 starting on October 1, 2017 through a notice of rent increase.

The Landlord's agent testified and presented evidence of the Tenant repeatedly paying rent late in this tenancy. As a result, the Landlord served the Tenant with a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") on June 13, 2017.

The 1 Month Notice was provided into evidence and shows a vacancy date July 31, 2017 due to repeatedly late payment of rent. The Landlord's agent testified that the 1 Month Notice was served to the Tenant by registered mail which was then received and signed for by the Tenant on June 20, 2017.

The Landlord's agent testified that since the issuing of the 1 Month Notice, the Tenant has failed to pay rent and has accumulated a total of \$8,255.00 in rental arrears. This comprises of a balance for: July 2017 in the amount of \$1,615.00; two non-payments for August and September 2017 in the amount of \$1,630.00 each; and two payments for October and November 2017 for the increased rent of \$1,690.00.

As a result, the Landlord requests an Order of Possession to end the tenancy as the Tenant is still occupying the rental unit without paying rent as well as a Monetary Order to recover the amount of rent owing. The Landlord's agent requested to amend the amount of rent owing on the Application as it had increased since it had been filed.

### Analysis

Section 47(1) (b) of the Act allows a landlord to end a tenancy if a tenant repeatedly pays rent late. I accept the Landlord's oral evidence that the Tenant was served with the 1 Month Notice on June 13, 2017 by registered mail in accordance with Section 88(c). I also accept the undisputed evidence that the Tenant received it on June 20, 2017.

I have examined the 1 Month Notice and I find that it was completed with the correct information on the approved form as required by Sections 47(3) and 52 of the Act. I also find that the vacancy date detailed on the 1 Month Notice complies with Section 47(2) of the Act in that it allows for a period of one full rental month before it takes effect.

Section 47(4) of the Act allows a tenant to dispute a 1 Month Notice by making an Application within ten days of receiving it. There is no evidence before me to indicate the Tenant applied to dispute the 1 Month Notice.

Section 47(5) of the Act states that if a tenant fails to make an Application within ten days of receiving a 1 Month Notice, the tenant is conclusively presumed to have accepted the tenancy ended on the vacancy date and must vacate the rental unit by that date. Therefore, as the Tenant failed to make an Application, the tenancy is conclusively presumed to have ended on July 31, 2017.

As the Tenant continues to occupy the rental unit beyond this date and is currently in rental arrears, the Landlord is granted an Order of Possession which is effective two days after service on the Tenant. This order must be served on the Tenant and may then be filed and enforced in the Supreme Court of British Columbia as an order of that court if the Tenant fails to voluntarily vacate the rental unit.

Section 26 of the Act requires a tenant to pay rent under a tenancy agreement whether or not the landlord complies with the Act. In relation to the Landlord's monetary claim, I accept the Landlord's undisputed evidence that the Tenant has failed to pay rent since being issued with the 1 Month Notice.

Pursuant to my authority under Section 64(3) (c) and Rule 4.2 of the Residential Tenancy Branch Rules of Procedure, I amend the Landlord's monetary claim for the outstanding balance of \$8,255.00 in rental arrears. Subsequently, I award this amount to the Landlord.

Since the Landlord has been successful in this Application, I also grant the \$100.00 filing fee for the cost of having to make this Application. Therefore, the total amount awarded to the Landlord is \$8,355.00

As the Landlord already holds \$775.00 in the Tenant's security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 72(2) (b) of the Act. As a result, the Landlord is issued with a Monetary Order for the remaining balance of \$7,580.00.

This order must be served on the Tenant and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Tenant fails to make voluntary payment.

### Conclusion

The Tenant did not dispute the 1 Month Notice and continues to occupy the rental unit without paying full rent. Therefore, the Landlord is granted an Order of Possession effective two days after service on the Tenant.

The Landlord is also awarded unpaid rent and the filing fee. The Landlord may achieve this relief by keeping the Tenant's security deposit and is issued with a Monetary Order for the remaining balance of \$7,580.00.

Copies of the above orders are attached to the Landlord's copy of this Decision. The Tenant may also be held liable for any enforcement costs incurred by the Landlord.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: November 20, 2017

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Residential Tenancy Branch