



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding EURAM INVESTMENTS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes            OPC, MNDL-S, MNDCL-S, FFL

### Introduction

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

- an Order of Possession based on the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 55;
- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:42 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only ones who had called into this teleconference.

As the landlord provided undisputed sworn testimony and written evidence that they handed the tenant the 1 Month Notice on September 28, 2018, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*. As the landlord gave undisputed sworn testimony that they handed a copy of the tenant's dispute resolution hearing package and written evidence package to the tenant on October 26, 2018, I find that the tenant was duly served with this package in accordance with sections 88 and 89 of the *Act*.

### Issues(s) to be Decided

Is the landlord entitled to an Order of Possession based on the landlord's 1 Month Notice? Is the landlord entitled to a monetary award for unpaid rent, or for damage or losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

This six-month fixed term tenancy began on June 15, 2018, and was scheduled to end on December 1, 2018. Monthly rent is set at \$950.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$475.00 security deposit paid when this tenancy began.

The landlord entered into written evidence a copy of the 1 Month Notice, requiring the tenant to end this tenancy by October 31, 2018. The landlord's 1 Month Notice cited the following reasons for ending this tenancy:

*Tenant or a person permitted on the property by the tenant has:*

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;...*

*Tenant has engaged in illegal activity that has, or is likely to:...*

- *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;*
- *jeopardize a lawful right or interest of another occupant or the landlord.*

*Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

Although the landlord did not enter into written evidence a Monetary Order Worksheet to support their claim for a monetary award of \$1,475.00, they provided written evidence and sworn testimony that \$130.00 in rent remained unpaid for this tenancy from October 2018. In addition, the landlord said that the tenant has not paid rent for December 2018, as the tenant continues to occupy the rental unit after October 31, 2018, the effective date of the 1 Month Notice. The remainder of the landlord's monetary claim was an estimate of the damage that had been done to the rental unit during the course of this tenancy. The landlord said that no repairs have yet been undertaken as the landlord does not yet have vacant possession of the rental unit, although the tenant advised them earlier that morning that they are going to vacate the rental unit.

### Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten 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 his application for dispute resolution within the ten 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 ended on the effective date of the 1 Month Notice, October 31, 2018.

Section 47(3) of the *Act* requires that “a notice under this section must comply with section 52 *[form and content of notice to end tenancy]*. I am satisfied that the landlord's 1 Month Notice entered into written evidence was on the proper RTB form and complied with the content requirements of section 52 of the *Act*. For these reasons, I find that the landlord is entitled to a 2 day Order of Possession. 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.

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, I find that the landlord's claim for damage is premature as the landlord has not yet gained possession of the rental unit or undertaken any repairs on this rental unit. I dismiss the landlord's claim for damage with liberty to reapply.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Section 26(1) of the *Act* establishes 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.”

There is undisputed evidence before me that the tenant has failed to pay \$130.00 in monthly rent owing for October 2018. In addition, the tenant continues to overhold in this rental unit following the October 31, 2018 date identified as the effective date to end this tenancy on the landlord's 1 Month Notice.

I allow the landlord a monetary award of \$130.00 for the unpaid rent owing from October 2018.

Section 57(3) of the *Act* allows a landlord to obtain compensation from an overholding tenant. Pursuant to that section of the *Act*, I allow the landlord a monetary award of \$183.88 ( $6\frac{1}{31} \times \$950.00 = \$183.88$ ) as the pro-rated amount of rent owing for December from December 1 to 6, 2018.

As the landlord has been successful in this application, I allow the landlord to recover the \$100.00 filing fee from the tenant.

I allow the landlord to recover the above-noted amounts, totaling \$413.88 from the tenant's security deposit.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I allow the landlord recover \$130.00 for unpaid rent, \$183.88 for overholding rent and the \$100.00 filing fee from the tenant's \$475.00 security deposit. I order that the remaining value of the tenant's security deposit is now set at \$61.12 ( $\$475.00 - \$130.00 - \$183.88 - \$100.00 = \$61.12$ ).

The landlord's claim for damage 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: December 04, 2018

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Residential Tenancy Branch