



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC MNRL-S FFL

### 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 10 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 November 12, 2018 was served on the tenant by posting on the rental unit door. The landlord submitted a signed Proof of Service form into evidence. Based on the evidence I find that the tenant was deemed served with the 1 Month Notice on November 15, 2018, three days after posting, in accordance with sections 88 and 90 of the Act.

The landlord testified that the landlord's application for dispute resolution dated November 19, 2018 was served on the tenant with the evidentiary materials by registered mail sent on December 6, 2018.. The landlord provided a Canada Post tracking numbers as evidence of service. Based on the evidence 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 December 11, 2018, five days after mailing.

At the outset of the hearing the landlord made an application requesting to amend the monetary amount of their claim. The landlord said that additional rent has become due and owing since the application was filed. As I find that additional rent becoming due is reasonably foreseeable, in accordance with section 64(3)(c) of the Act and Rule 4.2 of the Rules of Procedure, I allow the landlord to increase the monetary claim from \$1,168.00 to \$1,351.00.

#### 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. The current monthly rent for this periodic tenancy is \$1,807.00 payable on the first of each month. A security deposit of \$439.00 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 been late in paying their rent on multiple occasions during the past year. The landlord submitted a rent ledger showing the payments made by the tenant during their tenancy. The landlord testified that the tenant has been late on multiple occasions, their cheques have been returned NSF and there is a current rental arrear of \$1,351.00.

#### 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 effective date of the 1 Month Notice, December 31, 2018.

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 tenancy is in arrears by \$1,351.00. Accordingly, I issue a monetary award in the amount.

As the landlord's application was successful they are entitled to recover the filing fee for this application from the tenant.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's \$439.00 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 \$1,012.00 under the following terms:

Item	Amount
Rental Arrears	\$1,351.00

Filing Fee Recovery	\$100.00
Less Security Deposit	-\$439.00
<b>Total Monetary Order</b>	<b>\$1,012.00</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.

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: January 15, 2019

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Residential Tenancy Branch