



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCL MNRL-S OPC

### Introduction

This hearing dealt with the landlord's application pursuant to the Residential Tenancy Act (the "Act") for an order for possession pursuant to the landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") and a monetary order for unpaid rent and breach of the tenancy agreement.

The landlord attended the hearing but no one appeared on behalf of the tenant. I left the teleconference hearing connection open from the time it was scheduled for an additional twenty minutes to enable the tenant an opportunity to call. I confirmed that the Notice of Hearing provided the correct call-in numbers and participant codes. I also confirmed from the teleconference system that the landlord and I were the only persons who had called into this teleconference.

The landlord testified that she served the tenant with the notice of dispute resolution and her evidence package via Canada Post registered mail on January 15, 2019. The landlord provided a copy of the registered mail tracking numbers at the hearing. In accordance with sections 88, 89 and 90 of the *Act* I find that the tenant was deemed served with this package on January 20, 2019, five days after the landlord served it..

The One Month Notice was served on the tenant on December 31, 2018 by personal service. The One Month Notice has a stated move out date of January 31, 2019. I find the tenant was served with the One month Notice in accordance with section 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an order for possession based upon the landlord's One Month Notice pursuant to section 55 of the *Act*?

Is the landlord entitled to a monetary order for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to a monetary order for breach of the tenancy agreement section 67 of the *Act*?

Background and Evidence

The landlord provided to the hearing a copy of the tenancy agreement which showed the parties had entered into a fixed term tenancy starting on December 7, 2017 and ending on November 3, 2018. The landlord testified that the rent was \$1,400.00 per month and that the tenant paid both a \$700.00 security and pet deposit. The landlord testified that the tenant resided in the lower level of the property and another tenant lived in a rental unit above the tenant.

The landlord testified that the tenant caused a fire on October 5, 2018. The landlord testified that the tenant fell asleep while leaving an unattended pot boiling on the stove. The landlord testified that a large fire occurred which caused extensive damage to the property.

The landlord testified that she decided to continue the tenancy after the fire and they signed another fixed term tenancy agreement from December 1, 2018 to November 30, 2019. The monthly rent and deposits remained the same. The tenancy agreement has a provision that states, "No smoking including marijuana in the property." The landlord provided a copy of the tenancy agreement.

The landlord issued a One Month Notice dated December 31, 2018 and checked the following as grounds for the notice:

- The 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.

- Put the landlord's property at significant risk.
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.

The One Month Notice stated that the tenant may dispute the Notice within ten days after service by filing an Application for Dispute Resolution. If the tenant does not file an Application within the days, the One Month Notice states that the tenant is presumed to have accepted the One Month Notice and must move out of the rental unit by the date on the notice. The landlord testified that the tenant has not served her with an Application for Dispute Resolution seeking cancellation of the One Month Notice following the issuance of the Notice on December 31, 2018.

In addition to an Order of Possession, the landlord sought a monetary award of \$4,800.00 which the landlord said represented unpaid rent for January and February 2019 along with loss of rental income. The landlord testified that the upstairs tenants moved out of the property on December 27, 2018 because they were bothered by strong smells of marijuana smoke coming from the tenant's rental unit. The landlord provided a text message from the upstairs tenants corroborating this testimony.

The landlord testified that the upstairs tenants were good tenants who had resided at the property since March 2017. The landlord testified that the upstairs tenants paid rent of \$2,000.00 per month.

The landlord testified that the upstairs tenants notified her that they intended to move out approximately three weeks before they moved out on December 27, 2018. However, the landlord testified that she was out of the country at the time.

The landlord testified that she went to the property on December 29, 2018 to clean the upstairs rental unit after the upstairs tenants had vacated the property. The landlord testified that she smelled a very strong marijuana odor in the upstairs rental unit. The landlord testified that this odor was coming from the tenant's rental unit below.

The landlord testified that she advertised the upstairs rental unit on online classified services but she was unable to find a tenant to move into the upstairs rental unit until February 1, 2019. The landlord testified that fifteen people came to view the upstairs rental unit but no one wanted to rent the property because of the strong marijuana smell coming from the tenant's rental unit.

The landlord also testified that tenant has not paid rent for January or February 2019. The landlord testified that the tenant sent the landlord a cheque for the January 2019 rent but this cheque was rejected by the bank for non-sufficient funds in the tenant's bank account. The landlord provided a bank statement showing the rejection of the January 2019 rent cheque. The landlord testified that the tenant did not provide a rent cheque for February 2019. The landlord testified that the tenant is still residing in the rental unit.

### Analysis

The landlord is requesting an order of possession based upon the One Month Notice, a monetary order for unpaid rent and a monetary order for breach of the tenancy agreement. I will address each claim separately.

#### *Order of Possession*

Pursuant to section 47(4) of the *Act*, a tenant has ten days after receipt of a notice to end a tenancy for cause to dispute the notice. In this matter, the One Month Notice was personally served on the tenant on December 31, 2018 so the tenant had until January 10, 2019 to dispute the notice. However, that deadline has expired and the tenant has not disputed the notice.

Section 47(5) of the *Act* states that a tenant who does not timely file an application to dispute a notice to end tenancy for cause is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

Since the tenant did not timely file an application to dispute the landlord's One Month Notice, I find that the tenant is conclusively presumed to have accepted that this tenancy ended on the effective date of the notice, being January 31, 2019. Accordingly, I grant the landlord an order of possession effective two days after service on the tenant.

#### *Unpaid Rent*

The landlord also requested a monetary order for unpaid rent. I find that the tenant is obligated to pay the landlord rent in the amount of \$1,400.00 per month pursuant to the tenancy agreement. I find that the tenant has not paid rent for January 2019 so the landlord is entitled to a monetary award of \$1,400.00 for unpaid rent in January 2019.

In addition, as stated above, the tenancy ended on January 31, 2019 pursuant to the landlord's One Month Notice. I find that the tenant is overholding the tenancy by continuing to reside in the rental unit.

Section 57 of the *Act* defines an "overholding tenant" as a tenant who continues to occupy a rental unit after the tenant's tenancy is ended. The section goes on to say a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

*Residential Tenancy Policy Guideline #3* states a tenant is not liable to pay rent after a tenancy agreement has ended pursuant to Section 44 of the *Act*, however if a tenant remains in possession of the premises (overholds), the tenant will be liable to pay occupation rent on a per diem basis until the landlord recovers possession of the premises.

As the tenant still remains in the rental unit to the date of this hearing, the landlord is entitled to receive \$1,100.00 (22 days times the per diem rate of \$50.00) for the tenant's overholding since January 31, 2019.

In addition to the monetary award for unpaid rent the landlord also seeks compensation for the loss of rent from the upstairs rental unit caused by the tenant allegedly smoking marijuana in contravention of the tenancy agreement. Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the landlord to prove entitlement to a claim for a monetary award. The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

In this matter, I am satisfied that landlord has suffered a loss of rent from early termination of the upstairs rental unit and that the loss was a direct result the tenant's

breach of the tenancy agreement. The tenant submitted a text message from the upstairs tenant stating that they were vacating the property because of the tenant's smoking of marijuana in the rental unit. Furthermore, the tenancy agreement prohibited the smoking of marijuana.

However, I am not satisfied that the landlord has provided sufficient evidence to establish the amount of the loss caused by the tenant's breach of the tenancy agreement. The landlord has not provided a copy of the upstairs tenant's agreement to corroborate the amount of rent the landlord lost from the upstairs rental unit being vacant in January 2019.

Furthermore, I am not satisfied that the landlord has provided sufficient evidence to establish that she has taken reasonable measures to mitigate her loss. The landlord did not provide copies of classified advertisements to market the property. In addition, the landlord did not provide sufficient evidence that she promptly started looking for a new tenant after the upstairs tenant advised her that they were vacating the property approximately three weeks before they moved out. Accordingly, I dismiss the landlord's request for compensation for breach of contract.

Based on the undisputed testimony of the landlord and the tenancy agreement, I find that the landlord hold a security deposit of \$700.00 and a pet damage deposit of \$700.00. I find that the security deposit and the pet damage deposit may be deducted from the unpaid rent and overholding damages of \$2,500.00 pursuant to section 72(2)(b) of the *Act*.

Accordingly, I order the tenant to pay the sum of **\$1,100.00** to the landlord as follows.

<u>Item</u>	<u>Amount</u>
Unpaid rent and overholding damages payable to landlord	\$2,500.00
Less: Security deposit held landlord	(\$700.00)
Less: Pet Damage deposit held by landlord	(\$700.00)
Total Monetary order to landlord	<b>\$1,100.00</b>

### Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply

with this order, the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I grant the landlord a monetary order in the amount of **\$1,100.00**. If the tenant fails to comply with this order, the landlord may file the order in the Provincial Court to be 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: March 1, 2019

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Residential Tenancy Branch