



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

Tenant: CNC OLC PSF RP  
Landlord: OPRM-DR

### Introduction

This hearing dealt with applications from both the landlord and the tenant pursuant to the *Residential Tenancy Act* (the *Act*).

The tenant applied for:

- cancellation of a One Month Notice to End Tenancy for Cause (One Month Notice), pursuant to section 47 of the *Act*;
- an Order for the landlord to comply with the *Act*, regulation, and/or tenancy agreement pursuant to section 62 of the *Act*;
- an Order for the landlord to provide services or facilities required by the tenancy agreement or law pursuant to section 62 of the *Act*; and
- an Order for the landlord to make repairs pursuant to section 62 of the *Act*.

The landlord applied for:

- an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55 of the *Act*; and
- a Monetary Order for unpaid rent pursuant to section 67 of the *Act*.

The landlord attended with his son S.S., acting as the landlord's agent, at the date and time set for the hearing of this matter. The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:24 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the landlord, his agent, and I were the only ones who had called into this teleconference.

Rule 7.3 of the Rules of Procedure provides as follows:

**7.3 Consequences of not attending the hearing** – If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application with or without leave to reapply.

Therefore, in the absence of the tenant's attendance at this hearing, I order the tenant's application in its entirety dismissed without liberty to reapply.

I confirmed with the landlord that they had served on the tenant the Notice of Dispute Resolution Proceeding for this hearing. The landlord's agent testified that the tenant was served with the landlord's Notice of Dispute Resolution by Canada Post registered mail on September 12, 2019, and provided a Canada Post registered mail tracking number as proof of service (noted on the cover sheet of this Decision).

Section 90 of the *Act* sets out when documents that are not personally served are considered to have been received. Unless there is evidence to the contrary, a document is considered or 'deemed' received on the fifth day after mailing it is served by mail (ordinary or registered mail).

Residential Policy Guideline 12. Service Provisions provides guidance on determining deemed receipt, as follows:

*Where a document is served by Registered Mail, the refusal of the party to accept or pick up the Registered Mail, does not override the deeming provision. Where the Registered Mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.*

Therefore, I find that the tenant was served with the notice of this hearing on September 17, 2019, the fifth day after mailing, in accordance with sections 89 and 90 of the *Act*.

#### Preliminary Issue – Procedural Matters

Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

Should the landlord be granted an Order of Possession?  
Is the landlord entitled to a monetary award for unpaid rent?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

The landlord submitted a written tenancy agreement into documentary evidence, and confirmed the following information pertaining the tenancy agreement. The tenancy began on June 1, 2019 as a month-to-month tenancy. Monthly rent of \$2,300.00 is due on the first of the month. The tenant paid a security deposit of \$1,150.00 at the beginning of the tenancy, which continues to be held by the landlord.

The landlord's agent S.S. provided unchallenged affirmed testimony that on August 2, 2019 at approximately 3:35 p.m., he personally served the tenant with the One Month Notice, while accompanied by the landlord. Landlord's agent S.S. testified that the tenant was outside in her car when she was served with the One Month Notice. A copy of the One Month Notice was uploaded into documentary evidence. The landlord's agent testified that the tenant paid rent late on June 20, 2019, on July 4, 2019 and then failed to pay any rent for August 2019, resulting in two late rent payments and a non-payment of rent. Further the landlord's agent S.S. testified that the tenant has failed to pay rent for September and October 2019.

The landlord's agent S.S. provided unchallenged affirmed testimony that on August 22, 2019 the landlord served the 10 Day Notice to an adult in the tenant's rental unit, and submitted a proof service, signed by the recipient, into documentary evidence. The landlord's agent testified that the recipient P.B. identified herself as the tenant's mother-in-law and stated that she was "staying there".

Further to this, the landlord served the tenant with the 10 Day Notice in the Notice of Direct Request Dispute Resolution Proceeding package by Canada Post registered mail on September 6, 2019, and provided the registered mail tracking number which I have noted on the cover sheet of this Decision.

The landlord's agent testified that they had not been to the rental unit since August 27, 2019 out of concerns for their safety, and therefore they are unsure whether or not the tenant continues to reside in the rental unit, and as such are requesting an Order of Possession and a monetary order for unpaid rent.

### Analysis

As the tenant's application to dispute the landlord's One Month Notice to End Tenancy is dismissed, section 55 of the *Act* requires me to grant an order of possession if the landlord's notice to end a tenancy complies with section 52 of the *Act*.

In considering this matter, I have reviewed the landlord's One Month Notice dated August 2, 2019 to ensure that the landlord has complied with the requirements of section 52 of the *Act*. I find that the One Month Notice complies with the form and content requirements of section 52 of the *Act* as it is signed and dated by the landlord; provides the address of the rental unit; states the effective date of the notice; and provides the grounds for the tenancy to end. I accept the landlord's agent's unchallenged testimony that the tenant was late in making rent payments for June and July 2019, and failed to make any rent payment for August 2019.

Accordingly, 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 notice has passed, I issue an Order of Possession effective two (2) days after being served upon the tenant.

As I have found the landlord entitled to an Order of Possession on the grounds of the One Month Notice, it is no longer relevant to consider the landlord's entitlement on the grounds of the 10 Day Notice.

Section 26 of the *Act* requires that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent.

No evidence was presented at the hearing that the tenant had a right under the *Act* to deduct all or a portion of the rent.

Based on the unchallenged affirmed testimony of the landlord's agent regarding the terms of the tenancy agreement, I find that the tenant was obligated to pay monthly rent

of \$2,300.00 for the month of August 2019, as established in their agreed upon tenancy agreement.

The only documentary evidence submitted by the landlord consisted of a "Direct Request Worksheet" as neither a rent ledger nor a statement of accounts was included in the evidence provided to the Residential Tenancy Branch for this matter. I note that the Direct Request Worksheet stated that rent in the amount of \$2,300.00 was unpaid for August 2019. Therefore, I find that the landlord is entitled to a monetary award in the amount of \$2,300.00 for unpaid for August 2019.

The landlord continues to retain the tenant's security deposit of \$1,150.00. No interest is payable on the deposit during the period of this tenancy. In accordance with the offsetting provisions of section 72 of the *Act*, I order that the landlord retain the tenant's entire security deposit of \$1,150.00 in partial satisfaction of the monetary award, and I issue a Monetary Order of \$1,150.00 in the landlord's favour for the remaining amount of the monetary award owing.

### Conclusion

The tenant's application is dismissed in its entirety, without leave to reapply.

I grant an Order of Possession to the landlord effective **two (2) days after service on the tenant**. Should the tenant or anyone 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 order the landlord to retain the \$1,150.00 security deposit for this tenancy in partial satisfaction of my finding that the landlord is entitled to a monetary award of \$2,300.00 for unpaid rent owing for the month of August 2019.

I issue a Monetary Order in the landlord's favour against the tenant in the amount of \$1,150.00 in satisfaction of the remaining amount owing in unpaid rent. 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.

**The landlord is provided with these Orders in the above terms and the tenant must be served with these Orders by the landlord as soon as possible.**

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: October 11, 2019

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Residential Tenancy Branch