



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **FFL MNRL-S OPC**

### Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- An order for possession under a One Month Notice to End Tenancy for Cause ("One Month Notice") pursuant to sections 47 and 55;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

At the outset, the landlord applied to correct the landlord's name to add the accurate corporate landlord's name to the proceedings explaining that HH is the manager of the corporate landlord. Accordingly, the proceedings were corrected throughout. The corporate landlord and the agent HH, who represented the corporate landlord and is the agent thereof, are referred to as "the landlord".

The landlord was given the opportunity to make submissions as well as present affirmed testimony and written evidence.

The tenant did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional fifteen minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant were provided.

As the tenant did not attend the hearing, the landlord testified that the tenant was properly served with the Notice of Hearing and Application for Dispute Resolution pursuant to the Act by sending the documents to the tenant by registered mail on October 19, 2019, thereby effecting service five days later, on October 24, 2019, pursuant to section 90. The landlord provided the tracking number for the registered mail referenced on the first page.

Further to the landlord's testimony and supporting evidence, I find the landlord served the tenant in accordance with sections 89 and 90 of the Act on October 24, 2019.

#### *Preliminary Issue - Amendment*

The landlord requested an amendment to the landlord's application to increase the monetary order requested from \$2,570.00 to \$4,170.00 to include additional outstanding rent for the months of November and December 2019. The landlord's application, submitted in October 2019, pre-dated the due date for rent for November and December 2019 and as such the landlord's claim does not reflect outstanding rent for those months.

Section 64(3)(c) of the *Act* and section 4.2 of the Rules of Procedure provide that a landlord's monetary claim may be amended at the hearing in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made.

I find the tenant could reasonably anticipate the landlord's claim would be amended to include outstanding rent for the months of November and December 2019. The amendment would not be prejudicial to the respondent.

Pursuant to my authority under section 64(3)(c) of the *Act* and Rule 4.2, I amended the landlord's application to increase the landlord's overall claim by \$1,600.00 for unpaid rent for the months of November and December 2019. The total monetary order requested by the landlord is \$4,170.00 as well as \$100.00 reimbursement of the filing fee.

#### Issue(s) to be Decided

Is the landlord entitled to the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;

- An order for possession under a One Month Notice to End Tenancy for Cause ("One Month Notice") pursuant to sections 47 and 55;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

### Background and Evidence

The landlord provided uncontradicted testimony as the tenant did not attend the hearing.

The landlord testified that the tenancy began on November 1, 2016 for monthly rent of \$800.00 payable on the first of the month. The tenant provided a security deposit of \$400.00 at the beginning of the tenancy which the landlord holds. The landlord submitted a copy of the tenancy agreement. The tenant has not provided written authorization to the landlord to apply the security deposit to outstanding rent.

The landlord testified that in the 12-month period preceding the landlord's application, the tenant was late paying rent or failed to pay rent every month. Accordingly, the landlord issued the One Month Notice claiming that the tenant was repeatedly late paying rent. The Notice was served by posting to the tenant's door on August 29, 2019, thereby effecting service on September 1, 2019 requesting that the tenant vacate by September 30, 2019 (corrected to October 30, 2019). The landlord submitted a witnessed Proof of Service form in the RTB form.

The tenant did not file a dispute within ten days of service of the One Month Notice, a copy of which was submitted as evidence. The Notice provided that if the tenant did not dispute the Notice, the tenant was presumed to have accepted the Notice and must move out by the effective date, corrected to October 30, 2019.

The landlord provided a monetary order worksheet and supporting documentation in support of the landlord's testimony that the tenant is currently \$4,170.00 in arrears of rent as set out above.

Further to the above amendment to the landlords' claim, the landlord's claim is summarized as follows:

ITEM	AMOUNT
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Outstanding rent	\$4,170.00
Reimbursement of filing fee	\$100.00
(Less security deposit)	(\$400.00)
<b>Monetary Order Requested</b>	<b>\$3,870.00</b>

The tenant continued to occupy the unit.

The landlord requested an Order of Possession and a Monetary Order. The landlord requested authorization to apply the security deposit to the monetary award and reimbursement of the cost of the filing fee.

### Analysis

I have reviewed the landlord's materials and find that the landlord has met the burden of proof on a balance of probabilities with respect to all claims.

I further find that the landlord has met the burden of proof that the tenant was repeatedly late paying rent as claimed in the One Month Notice. I find the Notice complied with section 52 and was properly served on the tenant as testified by the landlord. I find the tenant did not submit a dispute to the One Month Notice and the tenant did not dispute the Notice, the tenant is presumed to have accepted the Notice and must move out by the effective date, corrected to October 30, 2019.

Section 40 of the *Act* allows a landlord to end a tenancy by giving notice if the tenant is repeatedly late paying rent. The section states as follows:

**40 (1)** A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(a) the tenant is repeatedly late paying the rent; ...

*Residential Tenancy Policy Guideline # 38 – Repeated Late Payment of Rent* states that three late payments are the minimum number to justify a notice under these provisions. The Guideline states as follows:

*The Residential Tenancy Act and the Manufactured Home Park Tenancy Act both provide that a landlord may end a tenancy where the tenant is repeatedly late paying rent.*

*Three late payments are the minimum number sufficient to justify a notice under these provisions.*

I find the tenant was required under the terms of the tenancy agreement to pay rent on the first of the month and repeatedly failed to do so twelve times in the 12-month period preceding the application.

I find the landlord is entitled to an Order of Possession based on the above grounds. I accordingly grant the landlord an Order of Possession effective two days after service on the tenant.

#### *Monetary Award*

I accept the landlord's testimony as supported by documentary evidence that the tenant is in arrears of rent of \$4,170.00. Accordingly, I find the landlord has met the burden of proof on a balance of probabilities with respect to this aspect of the claim and I grant the landlord a monetary award in this amount.

#### *Filing Fee*

As the landlord has been successful in this application, I grant the landlord a monetary award in the amount of \$100.00 for reimbursement of the filing fee.

#### *Security Deposit*

Pursuant to section 72, I grant the landlord authorization to apply the security deposit of \$400.00 to the monetary award.

#### *Summary*

In conclusion I grant the landlord a Monetary Order calculated as follows:

ITEM	AMOUNT
Outstanding rent	\$4,170.00
Reimbursement of filing fee	\$100.00
(Less security deposit)	(\$400.00)
<b>Monetary Order Granted</b>	<b>\$3,870.00</b>

### Conclusion

I grant the landlord 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 **\$3,870.00**. If the tenant fails to comply with this order, the landlord may file the order in the Provincial Court (Small Claims) 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: December 05, 2019

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Residential Tenancy Branch