



# 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 landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for cause, pursuant to sections 47 and 55;
- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- authorization to retain the tenant's security and pet damage deposits, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

Landlord P.P (the "landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were present during the hearing, service of the landlords' notice of application for dispute resolution was confirmed, in accordance with section 89 of the *Act*.

### Issues to be Decided

1. Are the landlords entitled to an Order of Possession for cause, pursuant to sections 47 and 55 of the *Act*?
2. Are the landlords entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
3. Are the landlords entitled to retain the tenant's security and pet damage deposits, pursuant to section 38 of the *Act*?

4. Are the landlords entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agree that this tenancy began in 2013. The tenant testified that rent in the amount of \$1,567.00 was payable on the first day of each month. The landlord testified that rent in the amount of \$1,600.00 was payable on the first day of each month. Neither party submitted evidence to support their testimony regarding the current monthly rent. Both parties agree that a security deposit of \$700.00 and a pet damage deposit of \$500.00 were paid by the tenant to the landlords. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The tenant testified that she moved out of the subject rental property a few days ago. The landlord testified that she recently saw a vehicle at the subject rental property and is still seeking an Order of Possession.

Both parties agree that the landlord personally served the tenant with a One Month Notice to End Tenancy for Cause (the "One Month Notice") on either September 3<sup>rd</sup> or 4<sup>th</sup>, 2019. The One Month Notice has an effective date of October 31, 2019.

The One Month Notice states the following reasons for ending the tenancy:

- Tenant is repeatedly late paying rent.
- Tenant has allowed an unreasonable number of occupants in the unit/site.
- Tenant has assigned or sublet the rental unit/site without the landlord's written consent.

The tenant did not file an application with the Residential Tenancy Branch to dispute the One Month Notice.

The landlord testified that the tenant was late paying rent every month from January to November 2019 and has not paid any rent for November of 2019. The landlord testified that she is seeking unpaid rent in the amount of \$1,600.00 for November 2019.

The tenant denied paying rent late and testified that it was the landlords who failed to pick the rent up on time. The tenant testified that she did not pay the landlord any rent for November 2019.

The landlord testified that the tenant has allowed an unreasonable number of people to stay at the subject rental property and allowed a motor home to park at the subject rental property without her permission. The landlord testified that someone lives in the motor home and uses the facilities at the subject rental property.

The tenant testified that she did not have an unreasonable number of occupants and that the motor home and its occupant no longer reside at the subject rental property.

### Analysis

Based on the testimony of both parties and the evidence provided, I find that service of the One Month Notice was effected on the tenant by September 4, 2019 in accordance with section 88 of the *Act*.

Section 47(4) and section 47(5) of the *Act* state that if a tenant who has received a One Month Notice does not make an application for dispute resolution within 10 days after the date the tenant receives the notice, the tenant 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.

In this case, the tenant did not dispute the One Month Notice within 10 days of receiving it. I find that, pursuant to section 47 of the *Act*, the tenant's failure to file to dispute the One Month Notice within 10 days of receiving the One Month Notice led to the end of this tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by October 31, 2019. 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 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. Pursuant to section 26(1) of the *Act*, I find that the tenant was obligated to pay the monthly rent on the first day of each month. Based on the testimony of both parties, I find that the tenant did not pay any rent for November 2019 and owes the landlord for November 2019's rent.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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. The onus to prove their case is on the person making the claim.

The testimony of the parties in regard to the quantum of rent is conflicting. The onus or burden of proof is on the party making the claim. When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities. I find that the landlord has failed to prove that rent was \$1,600.00 as no supporting evidence was provided. Nonetheless, the tenant confirmed that she did not pay any rent for November 2019 and that rent was \$1,567.00. I find that the tenant is required to pay the landlord \$1,567.00 in unpaid rent for the month of November 2019.

As the landlords were successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any deposit due to the tenant. I find that the landlord is entitled to retain the tenant's entire security deposit and pet damage deposit in the amount of \$1,200.00 in part satisfaction of their monetary claim for unpaid rent against the tenant.

### Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service 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 issue a Monetary Order to the landlords under the following terms:

Item	Amount
November 2019 rent	\$1,567.00
Filing Fee	\$100.00
Less security deposit and pet damage deposit	-\$1,200.00
<b>TOTAL</b>	<b>\$467.00</b>

The landlords are provided with this Order in the above terms and 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: December 05, 2019

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Residential Tenancy Branch