



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BURNABY LOUGHEED LIONS HOUSING SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes

FFL MNRL-S OPQ

### **Introduction**

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent in the amount of \$705 pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant attended the hearing and was assisted by an advocate ("**CC**"), who also translated for her. The landlord was represented at the hearing by its property manager ("**CR**"). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

CR testified, and the tenant confirmed, that the landlord served the tenant with the notice of dispute resolution form and supporting evidence package. The tenant testified, and CR confirmed, that the tenant served the landlord with her evidence package. I find that all parties have been served with the required documents in accordance with the Act.

### **Preliminary Issue – Monetary Claim**

At the outset of the hearing, CR advised me that the landlord was abandoning its monetary claim. He testified that, due to an administrative error on the part of the landlord, the tenant appeared to be in rental arrears when, in fact, she was not. As such, I dismiss, without leave to reapply, the monetary claim made against the tenant and the application to retain the security deposit in partial satisfaction of this claim.

**Issue(s) to be Decided**

Is the landlord entitled to:

- 1) an order of possession; and
- 2) recover the filing fee for this application from the tenant?

**Background and Evidence**

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting November 1, 2019. The tenant receives a monthly rental subsidy. Currently, the tenant's portion of the monthly rent is \$466. The tenant paid the landlord a security deposit of \$400. The landlord still retains this deposit.

The rental unit is a two-bedroom unit. At the start of the tenancy, the tenant lived with her son. In April 2019, her son vacated the rental unit. She currently lives alone.

As a result, CR testified, the tenant is "over housed" and no longer qualifies for a rental subsidy from BC Housing.

CR testified that on June 27, 2019, he posted a copy of a Two Month Notice to End Tenancy (the "**Notice**") on the door of the rental unit. The tenant disputed this, testifying that she received the Notice at the end of July, and not the end of June 2019.

The Notice indicates an effective move out date of August 31, 2019.

The reason cited in the Notice to end the tenancy is that the tenant no longer qualifies for the subsidized rental unit.

The tenant testified that she did not apply to the Residential Tenancy Branch to dispute the Notice.

The tenant does not dispute that she is over housed or that she no longer qualifies for the subsidized rental unit. Rather she testified that she cannot afford to move to a new

rental unit and pay rent at the market rate. She testified that on December 30, 2019, she applied to BC Housing to transfer to a subsidized, one-bedroom rental unit. She testified that she is unsure as to when the request for transfer would be granted.

Additionally, the tenant testified that she takes over 20 different prescriptions daily (she submitted medical records corroborating this), and CC argued that the tenant would be unduly prejudiced if the tenancy was ended.

CR testified that the landlord was not unsympathetic to the circumstances of the tenant but testified that he advised the tenant to apply to BC Housing for a transfer in April 2019 (after her son vacated). He testified that the landlord is willing to let the tenant remain in the rental unit until the end of March 2020 to give her time to find a new rental unit.

### **Analysis**

Based on the testimony of the parties, I find that the landlord served the tenant with the Notice. For the reasons set out below, it is not necessary that I determine what date this was done.

I find that the Notice meets the form and content requirements of section 52 of the Act.

Sections 49.1(5) and (6) of the Act state:

(5) A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

(6) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (5), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

Although the tenant participated in the hearing, the tenant did not file an application to dispute the Notice within 15 days of being served with the Notice, or at all days. As such, it is not necessary for me to determine whether the tenant was served with the Notice at the end of June 2019 or at the end of July 2019. Under either scenario, it would remain true that the tenant has failed to dispute the Notice.

Therefore, per section 49.1(6)(a), the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice and must move out of the rental unit. This is mandatory under the Act. The particular circumstances of the tenant are not relevant factors when considering whether or not to apply this section.

As the tenant has not yet vacated the rental unit, I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act. As the landlord is willing to allow the tenant to remain in the rental unit until the end of March 2019, the order of possession will be effective March 31, 2020, at 1:00 pm.

As:

- 1) I have dismissed the landlord's monetary claim;
- 2) this claim was made in error; and
- 3) the tenant was required to prepare to address this claim, despite it being made in error,

I find that the landlord is not entitled to recover its filing fee for this application.

### **Conclusion**

Pursuant to section 55 of the Act, I order that the tenant provide the landlord with vacate possession of the rental unit on or before March 31, 2020 at 1:00pm.

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 09, 2020

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Residential Tenancy Branch