



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Columbia Property Management Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      FFL MNDCL-S MNRL-S OPR

### Introduction

This hearing was scheduled in response to the corporate landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order of possession for cause pursuant to section 55 of the *Act*;
- a monetary order for damage or compensation pursuant to section 67 of the *Act*;
- a monetary order for rent and/or utilities for the landlord pursuant to 67 of the *Act*;
- an order of possession for unpaid rent only pursuant to section 55 of the *Act*; and
- authorization to recover the filing fee pursuant to section 72 of the *Act*.

The landlord's Property Manager KM attended the hearing via conference call. KM was given a full opportunity to be heard, to present sworn testimony, to make submissions. The tenant did not attend this hearing.

KM testified the tenant was served the Notice of Dispute Resolution together with the evidentiary package via Canada Post registered mail on November 22, 2019; however, KM advised that the package was returned on December 16, 2019. I find that this satisfied the service requirements set out in sections 90 of the *Act*, and find the tenant was deemed served in accordance with the *Act* on November 27, 2019.

Rule of Procedure 7.3 states:

### 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 re-apply.

I completed the hearing in the absence of the tenant.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

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

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

KM testified to the following undisputed facts. Tenant BK moved into the rental unit on March 18, 2019 and moved out on December 16, 2019. The tenant was served with the landlord's 10 Day Notice to End Tenancy for unpaid rent, (the "Notice"), dated October 09, 2019 by posting a copy on the tenant's door. The Notice indicates an effective move-out date of October 18, 2019. The monthly rent was \$950.00. The tenant paid a security deposit of \$475.00 to the landlord which the landlord has retained.

The tenant did not attend the hearing to present any submissions in relation to the Notice and the tenant did not upload any evidence disputing the landlord's Notice.

KM testified that the tenant did not pay any rent for the months of October, November and December 2019. KM testified that the landlord is seeking unpaid rent for the above months together with late fees for the months of October and November 2019 comprising of \$25.00 each. A tenant rent ledger showing outstanding rent and fees was entered into evidence.

The tenancy agreement and addendum were entered into evidence. The addendum states at section B:

Late payments returned and non-sufficient funds cheques (N.S.F.) are subject to a maximum service charge of \$25.00 each, or the then current rate charge for such services by the Bank, whichever is greater.

Analysis

Sections 47(4) and (5) of the Act state:

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

(5) If a tenant who has received a Notice under this section does not make an application for dispute resolution in accordance with subsection (4), 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.

Based on the landlord's testimony and the notice before me, I find that the tenant was served with a valid Notice. The tenant did not participate in the hearing and did not file an application to dispute the Notice within 5 days of its receipt. Therefore, the tenant is conclusively presumed pursuant to section 47(4) of the *Act* to have accepted that the tenancy ended on the effective date of October 18, 2019. As the tenant has already moved out, I decline to award an Order of Possession.

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 in the amount of \$950.00 on the first day of each month. Based on the testimony of KM and the rent ledger entered into evidence I find that the tenant did not pay rent in accordance with section 26(1) of the *Act* and owes the landlord \$2,850.00 in unpaid rent for the months of October to December 2019.

Section 7(1)(d) of the *Residential Tenancy Regulation* (the "*Regulation*") states that a landlord may charge subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent. Section 7(2) of the *Regulation* states that a landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

Section B of the addendum to the tenancy agreement provides for a late fee of \$25.00. I find that the tenant was late paying rent for the Months of October and November and is required to pay late fees in the amount of \$50.00 as claimed by the landlord.

As the landlord was 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) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit due to the tenant. I find that the landlord is entitled to retain the tenant's entire security deposit in the amount of \$475.00 in part satisfaction of their monetary claim against the tenant.

### Conclusion

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
October to December 2019 rent	\$2,850.00
October to November 2019 late fees	\$50.00
Filing Fee	\$100.00
Less security deposit	-\$475.00
<b>TOTAL</b>	<b>\$2,525.00</b>

The landlord is 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: January 13, 2020

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Residential Tenancy Branch