



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CONAYT FRIENDSHIP SOCIETY  
and [tenant name suppressed to protect privacy]

## DECISION

**Dispute Codes:** FFL MNRL-S OPC

### **Introduction**

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

- an Order of Possession for cause, pursuant to section 55;
- a monetary order for unpaid rent and utilities pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

While the landlord's agent ("landlord") attended the hearing by way of conference call, the tenant did not. I waited until 9:42 a.m. to enable the tenants to participate in this scheduled hearing for 9:30 a.m. The landlord's agent was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord's agent and I were the only ones who had called into this teleconference.

The landlord testified that the tenants were served with the landlord's application for dispute resolution hearing package on November 13, 2019 by way of registered mail. The landlord provided a tracking number in the hearing. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenants deemed served with the landlord's application and evidence on November 18, 2019, five days after its registered mailing.

The landlord testified that the tenants were served the 1 Month Notice dated October 7, 2019 by personally serving the tenants on the same date. Accordingly, I find that the 1 Month Notice was served to the tenants in accordance with section 88 of the *Act*.

Although the landlord had applied for a monetary Order of \$10,300.00 in their initial claim, since they applied another \$550.00 in rent has become owing that was not included in the original application. RTB Rules of Procedure 4.2 allows for amendments

to be made in circumstances where the amendment can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made. On this basis, I have accepted the landlord's request to amend their original application from \$10,300.00 to \$10,850.00 to reflect the unpaid rent that became owing by the time this hearing was convened.

**Issue to be Decided**

Is the landlord entitled to an Order of Possession for cause?

Is the landlord entitled to monetary compensation for unpaid rent?

Is the landlord entitled to recover their filing fee for this application?

**Background and Evidence**

This month-to-month tenancy began on May 20, 2011 with rent currently set at \$425.00 per month, payable on the first of the month. The landlord collected, and still holds, a security deposit in the amount of \$313.50.

On October 7, 2019, the landlord issued a 1 Month Notice to End Tenancy for Cause for repeated late payment of rent. The landlord submitted that the tenants have repeatedly failed to pay rent on time during this tenancy, and wished to end the tenancy on that basis. The landlord submitted in evidence a detailed spreadsheet of the payments made by the tenants which shows that the tenants owe \$10,300.00 in outstanding rent up to and including November 2019.

Since the landlord filed this application, the tenants have made only one payment in the amount of \$300.00 on December 9, 2019, for use and occupancy only. The landlord testified that the tenants have not made further payments for December 2019 or January 2020 rent. The landlord is seeking a monetary order for the unpaid rent as well as an Order of Possession for January 31, 2020.

**Analysis**

A copy of the 1 Month Notice was submitted by the landlord for this hearing, and I find that the landlord's 1 Month Notice complies with section 52 of the *Act*, which states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the

grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenants may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. I find that the tenants have failed to file his application for dispute resolution within the ten days of service granted under section 47(4) of the *Act*. Accordingly, I find that the tenants are conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ended on the corrected, effective date of the 1 Month Notice, November 30, 2019.

In this case, this required the tenants and anyone on the premises to vacate the premises by November 30, 2019. As this has not occurred, I find that the landlord is entitled to an Order of Possession against the tenants, pursuant to section 55 of the *Act*. The landlord is granted an Order of Possession for January 31, 2020 as requested.

**Section 26** of the *Act*, in part, states as follows:

**Rules about payment and non-payment of rent**

**26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.

I accept the undisputed evidence of the landlord that the tenants owe unpaid rent in the amount of \$10,850.00. I find that the tenants did not have the right under the *Act*, or an order by an Arbitrator to withhold any portion of the rent. I, therefore, grant the landlord's application for \$10,850.00 in unpaid rent.

As the landlord was successful in their claim, I allow the landlord to recover the \$100.00 filing fee for their application.

The landlord continues to hold the tenants' security deposit of \$313.50. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security deposit in partial satisfaction of the monetary claim.

**Conclusion**

I find that the landlord is entitled to an Order of Possession. I find that the landlord's 1 Month Notice is valid and effective as of November 30, 2019.

I grant an Order of Possession to the landlord effective January 31, 2020. The landlord is provided with this Order and the tenant(s) must be served with this Order. Should the tenant(s) and any other occupants in the rental unit fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I allow the landlord's monetary claim for unpaid rent and recovery of the filing fee. The landlord is issued a monetary order in the amount of \$10,636.50. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security deposit in satisfaction of the monetary claim.

Unpaid Rent	\$10,850.00
Filing Fee	100.00
Less Deposit Held by Landlord	-313.50
<b>Total Monetary Order</b>	<b>\$10,636.50</b>

The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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 3, 2020

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Residential Tenancy Branch