



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **OPC, MNDL-S, MNDCL-S, FFL**

### 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.

The landlord attended with CFL, property manager, and AS, lawyer ("the landlord"). The tenant attended for the first 18 minutes of the hearing. All parties had opportunity to provide affirmed testimony, present evidence and make submissions. No issues of service were raised. The hearing process was explained.

### *Preliminary Issue*

At the outset, the tenant requested an adjournment of the hearing.

The tenant acknowledged being served with the Notice of Hearing and Evidence Package on March 20, 2020, 5 weeks prior to the hearing but stated that he needed more time to prepare. He stated that he was “mentally ill” and unable to function efficiently on a day-to-day basis. The tenant did not submit medical or other evidence in support of his assertion that he was mentally ill.

The tenant stated that he was a lawyer certified in two of the states in the USA and if the adjournment was not granted, he intended to file an application for judicial review for discrimination based on mental illness.

The parties testified that they discussed a potential resolution several days prior to the hearing and failed to come to an agreement.

The landlord objected to the adjournment being granted stating that the strata had imposed 4 outstanding noise fines on the unit. The landlord also stated that inspection of the unit, illustrated in submitted pictures, showed extreme filth, such as urine splashed walls in the bathroom, and damage. The landlord anticipated more noise complaints and more damage to the unit. The landlord stated that the landlord considered it imperative that the hearing go ahead as scheduled.

In considering the tenant’s application for an adjournment, I reviewed the criteria established in Rule 7.9 of the RTB *Rules*, which includes the following provisions:

*Without restricting the authority of the arbitrator to consider the other factors, the arbitrator will consider the following when allowing or disallowing a party’s request for an adjournment:*

- *the oral or written submissions of the parties;*
- *the likelihood of the adjournment resulting in a resolution;*
- *the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment: and*
- *whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
- *the possible prejudice to each party.*

I found that an adjournment was unlikely to result in a resolution. I determined that the tenant had failed to take any steps to prepare for the hearing in the 5 weeks following service and that he had intentionally neglected preparation without any explanation other than the unsupported statement that he was “mentally ill”. I found the tenant submitted no evidence of his alleged mental disability and that the tenant failed to

establish that the adjournment was necessary to provide him with a fair opportunity to prepare. The tenant was unable to articulate what he would do differently between today and the adjourned date.

I concluded that there was possible prejudice to the landlord in the damage which has taken place in the unit and the likelihood that further damage would occur.

Considering the testimony of the parties, the evidence and the factors above, I rejected the tenant's application for an adjournment. I informed the parties of my decision. Accordingly, the hearing continued.

At 11:18, 18 minutes after the start of the hearing and immediately after the rejection of his application for an adjournment, the tenant hung up and left the hearing.

#### Issue(s) to be Decided

Is the landlord entitled to:

- 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.

The landlord provided uncontradicted testimony as the tenant did not attend the hearing after the first 18 minutes during which the only issue under consideration was the application for the adjournment.

The landlord testified that the 1-year fixed term tenancy began on September 14, 2018 for monthly rent of \$2,408.00 payable on the first of the month. The tenant provided a security deposit of \$1,175.00 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 retain the security deposit

The landlord testified as follows:

- The tenant was late paying rent due on February 1, 2020 (received February 7, 2020), January 1, 2020 (received January 20, 2020), December 1, 2019 (received December 5, 2019) and November 1, 2019 (received November 4, 2019.)
- The tenant created noise and disturbances in his unit which resulted in four strata fines of \$200.00 each for a total of \$800.00 on the following dates: July 17, 2019, August 6, 2019, September 5, 2019 and September 14, 2019.
- The landlord informed the tenant in writing of the landlord's intention to terminate the tenancy if the noise did not cease. Copies of the letters were submitted of the following dates: August 8, 2019 and October 10, 2019.
- The landlord demanded the tenant reimburse the landlord for the fines of \$800.00 in a letter of October 10, 2019; the tenant did not reimburse the landlord.
- On January 21, 2020, the landlord conducted an inspection of the unit and found the unit filthy and damaged. For example, unidentified substances and dirt had been smeared on the walls. Urine was on the walls of the bathroom. A toilet roll holder had been torn off the wall. The stove top was deeply burned.
- The tenant has not paid rent for April 2020; the tenant acknowledged outstanding rent in this amount.

Accordingly, the landlord issued the One Month Notice claiming as follows:

- a. the tenant was repeatedly late paying rent;
- b. the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- c. the tenant has not done required repairs of damage to the unit;
- d. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;

The Notice was personally served on the tenant on February 14, 2020; the tenant acknowledged service. The Notice requested that the tenant vacate the unit by March 31, 2020.

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 March 31, 2020.

The landlord provided copies of the strata documents confirming the fines of \$800.00 and a copy of the ledger.

The landlord requested a monetary order of \$800.00 for reimbursement of the amount of the fines and authorization to apply the security deposit to the monetary award. The landlord requested authorization to file an application for outstanding rent and damages at a later day.

The landlord requested reimbursement of the filing fee.

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

ITEM	AMOUNT
Strata fines reimbursement	\$800.00
Reimbursement of filing fee	\$100.00
<b>Monetary Award Requested</b>	<b>\$900.00</b>

The landlord requested authorization to apply the security deposit the monetary award leaving a balance as follows:

ITEM	AMOUNT
Security deposit	\$1,175.00
(Security deposit applied to award)	(\$900.00)
<b>Balance of security deposit</b>	<b>\$275.00</b>

The tenant continues to occupy the unit.

The landlord also requested an order of possession.

### 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 and confirmed by the tenant. I find the tenant did not submit a dispute to the One Month Notice; as the tenant did not dispute the Notice, the tenant is presumed to have accepted the Notice and must move out by the effective date of March 31, 2020.

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 failed to do so four times from November 1, 2019 to February 1, 2020.

I find there is no need to consider the other reasons for the issuance of the Notice.

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 uncontradicted testimony as supported by documentary evidence that the tenant owes the landlord \$800 for reimbursement of strata fines for noise.

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 with authorization to apply a portion of the security deposit to the award.

As this award deals solely with the issue of strata fines described above, I authorize the landlord to bring an application for a monetary award for additional damages and compensation pursuant to section 67.

#### *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 a portion of the security deposit of \$900.00 to the monetary award leaving a balance of the security deposit of **\$275.00**.

#### *Summary*

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

ITEM	AMOUNT
Strata fines reimbursement	\$800.00
Reimbursement of filing fee	\$100.00
<b>Monetary Award</b>	<b>\$900.00</b>

(Security deposit)	(\$900.00)
<b>Monetary Order</b>	<b>\$00.00</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.

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: April 21, 2020

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Residential Tenancy Branch