



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CANADIAN NATIONAL RELOCATION LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC MNDC MNSD FF

### Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution made on February 25, 2020 (the "Application"). The Landlord applies for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession;
- a monetary order for money owed or compensation for damage or loss;
- an order permitting the Landlord to retain the security deposit held in partial satisfaction of the claim; and
- an order granting recovery of the filing fee.

The Landlord attended the hearing and was represented by C.S., legal counsel. The Tenants were represented at the hearing by T.K. The Landlord and T.K. provided affirmed testimony.

On behalf of the Landlord, C.S. advised that the Notice of Dispute Resolution Proceeding package was served on the Tenants by registered mail and that further documentary evidence was served on the Tenants via email. T.K. raised an issue with respect to the timing of some of the Landlord's documentary evidence but nevertheless acknowledged receipt. In any case, this Decision has not been made based on the potentially late documentary evidence submitted but on the testimony of the parties. Therefore, I find there is no prejudice to the Tenants in proceeding with the hearing. The Tenants also submitted documentary evidence in response to the Application. T.K. testified it was served on the Landlord. C.S. acknowledged receipt on behalf of the Landlord.

No further issues were raised with respect to service or receipt of the above documents during the hearing. The parties were in attendance and were prepared to proceed. Therefore, pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were provided with a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Landlord entitled to an order of possession?
2. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?
3. Is the Landlord entitled to retain the security deposit held?
4. Is the Landlord entitled to recover the filing fee?

### Background and Evidence

The tenancy agreement submitted into evidence confirms the fixed-term tenancy began on October 1, 2019 and was expected to continue to September 30, 2020. Rent in the amount of \$5,000.00 per month is due on the first day of each month. The Tenants paid a security deposit in the amount of \$2,500.00, which the Landlord holds. The tenancy agreement permits the Tenants to sublet the rental unit. This provision has resulted in some difficulties between the parties because the strata bylaws do not permit tenants to sublet the unit.

The Landlord sought an order of possession based on an undisputed One Month Notice to End Tenancy for Cause, dated February 3, 2020 (the "One Month Notice"). A copy of the One Month Notice was submitted into evidence. On behalf of the Landlord, C.S. advised the One Month Notice was served on the Tenants by registered mail and by email on February 3, 2020. T.K. testified the One Month Notice was received at the end of February. However, the Landlord relied on correspondence between an agent of the corporate Tenant and C.S. in support of the Landlord's position that the One Month Notice was received on February 3, 2020. In any case, the Landlord and T.K. both testified that the Tenants have not disputed the One Month Notice and that the Tenants

furniture remains in the rental unit. T.K. testified the sub-tenants vacated the unit in April.

In addition, the Landlord sought a monetary order for unpaid rent. The Landlord testified rent was not paid when due on April 1 and May 1, 2020. On behalf of the Tenants, T.K. acknowledged rent was not paid as claimed but testified the Tenants were justified in withholding rent because the sub-tenants did not pay rent, the Landlord improperly communicated with the sub-tenants, and the Landlord limited the Tenants' access to the rental unit. T.K. also testified the Landlord has a history of locking tenants out of their rental units.

Finally, the Landlord requested that the Landlord be permitted to retain the security deposit in partial satisfaction of the claim and sought to recover the \$100.00 filing fee paid to make the Application.

### Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 47(1)(i) of the *Act* permits a landlord to take steps to end a tenancy when a tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent. Section 47(4) confirms that a tenant who receives a notice to end tenancy under this section has 10 days to dispute the notice by making an application for dispute resolution. Section 47(5) of the *Act* confirms that failure to do so results in the conclusive presumption that the tenant accepts that the tenancy ends on the effective date of the notice to end tenancy and must vacate the rental unit.

In this case, I find that the Landlord served the One Month Notice on the Tenants by registered mail and by email on February 3, 2020. I am satisfied based on the documentary evidence before me that the One Month Notice was received on that date. I also find the Tenants did not dispute the One Month Notice within 10 days after receipt as required by section 47(4) of the *Act* or at all. As a result, I find the Tenants are conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit. However, the Tenants continue to occupy the rental unit as the furniture that was provided to their sub-tenant remains in the unit. Accordingly, I find the Landlord is entitled to an order of possession which will be effective two days after it is served on the Tenants.

In addition, section 26 of the *Act* confirms a tenant must pay rent when due 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. In this case, I find the Tenants did not pay rent when due on April 1 and May 1, 2020. However, the sub-tenant's failure to pay rent to the Tenants and the Landlord's alleged behaviour did not give rise to a right under the *Act* to deduct rent. Therefore, I find the Landlord has demonstrated an entitlement to a monetary award for unpaid rent in the amount of \$10,000.00.

In the circumstances, I find it is appropriate to order that the Landlord is entitled to retain the security deposit held in partial satisfaction of the claim. Having been successful, I also find it is appropriate to grant the Landlord \$100.00 in recovery of the filing fee. Therefore, pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$7,600.00 which has been calculated as follows:

<b>Claim</b>	<b>Amount</b>
Unpaid rent:	\$10,000.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$2,500.00)
<b>TOTAL:</b>	<b>\$7,600.00</b>

### Conclusion

The Landlord is granted an order of possession which will be effective two days after service on the Tenants. The order may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$7,600.00. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: May 5, 2020

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Residential Tenancy Branch