



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNRL-S, OPC, FFL

### Introduction

The landlord filed an Application for Dispute Resolution (the “Application”) on July 9, 2020 seeking an order of possession for the rental unit, to recover the money for unpaid rent, and to recover the filing fee for the Application. The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on August 13, 2020. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The landlord attended the telephone conference call hearing; the tenants did not attend.

To proceed with this hearing, I must be satisfied that the landlord made reasonable attempts to serve the tenants with this Notice of Dispute Resolution Proceeding. This means the landlord must provide proof that the document has been served at a verified address allowed under Section 89 of the *Act*, and I must accept that evidence.

The landlord gave testimony that they sent the notice of this hearing and their prepared evidence via registered mail to each of the tenants on July 10, 2020. They provided a Canada Post registered mail tracking number and a printout confirmation to show that delivery was completed on both mail items on July 14, 2020. This was to the mail address where the tenants reside, in the rental unit.

Based on the submissions of the landlord, I accept the tenants was served notice of this hearing and the landlord’s application in a manner complying with section 89(1)(c) of the *Act*, and the hearing proceeded in the tenants’ absence.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for Cause pursuant to sections 47 and 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

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord spoke to the terms of the tenancy agreement, a copy of which was provided as evidence. The tenancy began on December 1, 2018, with the rent amount at \$2,500.00. The tenants made a payment of \$1,250.00 for a security deposit on November 30, 2018. The utilities of rent, electricity and heat are not included in the monthly rent amount. The tenants were not in attendance at the hearing to provide any information that contradicts that presented by the landlord on these points.

The landlord issued a 'One-Month Notice to End Tenancy for Cause' on June 25, 2020. The reason for this was the tenant "repeatedly late paying rent." The landlord listed details for December 2019 and January February and March 2020, with each of these months showing the tenant's late payment of rent. In the hearing, the landlord stated this pattern of late payments began "shortly after move in".

In the hearing, the landlord stated that the tenant paid a portion of the rent for April 2020, and thereafter made no payments for each of the months May, June, July and August.

The landlord provided the date of August 1, 2020 as the date on which the tenant must move out.

The landlord also submitted a 'Proof of Service' for the One Month Notice which shows that the landlord delivered a copy to the tenants at 4:25 pm on June 25, 2020. The

landlord attached the One Month Notice to the door of the rental unit at that time. A witness signed the form and provided their name to state that they saw that transaction. In the hearing, the landlord stated they served the two-page One Month Notice in the manner described on the proof of service document.

The One Month Notice states that the tenants had ten days from the date received to pay the rent in full or apply for dispute resolution, or the tenancy would end on the vacancy date indicated, August 1, 2020. There is no record of the tenants subsequently paying the rent or applying for dispute resolution. The landlord stated in the hearing that the tenants remain in the rental unit as of the date of the hearing.

The landlord provided an email from the tenants dated June 26, 2020 in response to their message to the tenants on April 20, 2020. The message states: "The letter of eviction is not viable during covid . . ." The landlord did not give a statement directly addressing this in the hearing.

The landlord initially applied for a monetary order for \$11,638.13. The landlord amended the amount of this claim in the hearing. Two more utility bills arrived prior to the hearing, reflecting payments that were due during the time period in question. This increases the total amount claimed to \$11,800.87.

The landlord itemized receipts of utility amounts claimed from BC Hydro and the natural gas provider.

### Analysis

I allow the landlord's amendment to the monetary amount claimed. I find this is reasonable in the circumstances where subsequent months' rent was not paid. I accept the landlord's amendments to their claimed amounts and thus proceed on this analysis. From the testimony of the agent I am satisfied that a tenancy agreement was in place. The agent provided the specific term of rental payment and amount. The tenants did not attend the hearing; therefore, there is no evidence before me to show otherwise.

Ministerial Order No. M089, issued under the *Emergency Program Act* on March 30, 2020, previously provided that "a landlord must not give a tenant a notice to end the tenancy during the period this order is in effect."

Ministerial Order No. 195, issued on June 24, 2020 and effective on that date, provides that a landlord must not issue a 10 Day Notice for “affected rent.” This term is defined in section 1 as:

- (a) rent that becomes due to be paid by a tenant in accordance with a tenancy agreement during the emergency period, and
- (b) utility charges that become due to be paid by a tenant during the emergency period, if a tenancy agreement requires the tenant to pay utility charges to the landlord;

The more recent Ministerial Order No. 195, while still restricting the issuance of a 10 Day Notice for rent owing during the state of emergency, no longer provides a restriction for the issuance of a 10 Day Notice for unpaid rent or utilities *for any period prior to the start of the state of emergency*.

The “emergency period” began on March 18, 2020, and as of the date of this decision continues into the present. Based on my interpretation of the legislation, and in consideration of the One Month Notice issued by the landlords in this matter, I find they issued the One Month Notice on June 25, 2020 for the reason of repeated late payments of rent up to March 2020. These dates show time periods that are not within the “emergency period”. For this reason, I find the landlords are not prevented from issuing the One Month Notice.

The *Act* section 47(4) allows a tenant who receives a One Month Notice ten days to pay the overdue rent or submit an Application for Dispute Resolution to cancel a One Month Notice. Section 47(5) stipulates that if a tenant fails to apply seeking to cancel the One Month Notice, they are conclusively presumed to have accepted the tenancy ends on the effective date of the One Month Notice and they must vacate the unit.

Based on the oral testimony, and in accordance with section 88 of the *Act*, I find that the landlord served the two-page One Month Notice on June 25, 2020. By section 90, I find it was deemed to have been received on June 28, 2020.

I accept the evidence before me that the tenants failed to pay the rent and utilities owed in full by July 8, 2020, within the ten days granted under section 47(4) of the *Act* and did not dispute the One Month Notice within that ten-day period.

Based on the foregoing, I find that the tenants are conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ended on the effective date of the One Month Notice, August 1, 2020.

Based on the evidence before me, I find the landlord is entitled to an Order of Possession. As per the landlord's request I will issue the Order of Possession under section 55 of the *Act*.

Section 26 of the *Act* outlines a tenant's duty to pay rent:

- (1) A tenant must pay rent when it is due under the tenancy agreement, whether the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenants has a right under this Act to deduct all or a portion of the rent.

By the specific term within the tenancy agreement, the tenants agreed to pay all utilities.

I find there was a pattern of non-payment of rent and utilities, starting from January 2020 onwards. The landlord stated that they tried to give the tenants opportunities to continue paying on a regular basis, but the tenants were not able to comply.

The landlord provided detailed testimony, bank statements and evidence in the form of utilities statements. As presented, I find the amount of \$11,800.87 is accurate and validated through evidence, through to August 2020.

The tenants did not attend the hearing and did not provide documentary evidence; therefore, there is no evidence to the contrary on this exact amount.

Moreover, the hearing itself was scheduled for August 13, 2020, and the landlord stated that they were certain the tenants were still living in the rental unit on that date. The tenants have been overholding since the effective date of the end of tenancy, August 1, 2020. For this reason, I grant the landlord the claimed monthly rental amount of \$2,500.00 for August 2020.

The tenants did not attend the hearing and did not provide documentary evidence; therefore, there is no evidence contrary to that provided by the landlord.

I find the landlord are entitled to an award for the amount claimed: \$11,800.87.

The *Act* section 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. The landlord has established a claim of \$11,800.87. After setting off the security deposit amount of \$1,250.00, there is a balance of \$10,550.87. I am authorizing the landlord to keep the security deposit amount and award the balance of \$10,550.87 as compensation for rent and utility amounts owing.

As the landlord is successful, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenants. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$10,650.87 for rent and utilities owed from April 2020 through to August 2020 and a recovery of the filing fee for this hearing application. The landlord is provided with this Order in the above terms and the tenants must be served with **this Order** as soon as possible. Should the tenants 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 *Act*.

Dated: August 14, 2020

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Residential Tenancy Branch