



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPC, OPB, MNRL-S, MNDCL-S, FFL

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession based on a One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to sections 47 and 55;
- an Order of Possession for a breach of a material term of the tenancy agreement pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 11:31 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 11:00 a.m.

The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Rules 7.1 and 7.3 of the Residential Tenancy Branch Rules of Procedure provides as follows:

*The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.*

The landlord testified that the Landlord's Application for Dispute Resolution (the Application), an Amendment to an Application for Dispute Resolution (the Amendment) and an evidentiary package were sent to Tenant J.B. by way of registered mail on August 08, 2020. The landlord provided the Canada Post Tracking Number to confirm this registered mailing. In accordance with sections 88, 89 and 90 of the *Act*, I find that Tenant J.B. was deemed served with the Application, the Amendment and an evidentiary package on August 13, 2020, the fifth day after the registered mailing.

The landlord submitted that Tenant S.H. had vacated the rental unit at some point on or around June 2020 and was not served with this Application and notice of this hearing by registered mail. As Tenant S.H. not been served with the Application in accordance with section 89 the *Act*, I dismiss the portion of the landlord's Application naming Tenant S.H. as a respondent, without leave to reapply. I will now consider the landlord's Application naming Tenant J.B. (the tenant) as the respondent.

#### Issues(s) to be Decided

Is the landlord entitled to an Order of Possession based on the One Month Notice or a breach of a material term of the tenancy agreement?

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the landlord entitled to authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested?

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

#### Background and Evidence

The landlord gave undisputed affirmed testimony that this tenancy began on June 03, 2019, with a monthly rent of \$1,700.00, due on the first day of each month. The landlord testified they continue to retain a security deposit in the amount of \$800.00.

A copy of the signed One Month Notice dated June 30, 2020, with an effective date of July 31, 2020, was included in the landlord's evidence. The landlord cited the following reason for the issuance of the One Month Notice:

- *Residential Tenancy Act only: security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.*

The landlord gave written evidence and undisputed testimony that the One Month Notice was personally served to Tenant J.B. door on June 30, 2020. The landlord also

provided a copy of the Monetary order Worksheet showing the unpaid rent owing for this tenancy.

The landlord gave undisputed affirmed testimony and evidence that the tenant has unpaid rent owing in the amount of \$550.00 for May 2020, \$1,200.00 for June 2020 and \$1,500.00 for July 2020. The landlord testified that Tenant J.B. occupied the rental unit for most of August and was still in the process of vacating the rental unit as of August 28, 2020. The landlord stated that they are also seeking compensation for Tenant J.B.'s use and occupancy of the rental unit for August 2020 in the amount of \$1,700.00, as well as to retain the security deposit and to recover the filing fee for the Application.

### Analysis

Section 47 of the *Act* establishes that a landlord may issue a One Month Notice to end a tenancy when the landlord has cause to do so. Section 47(4) and (5) of the *Act* stipulates that a tenant who has received a notice under this section, who does not make an application for dispute resolution within 10 Days after the date the tenant receives the notice, is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

Based on the landlord's undisputed evidence and sworn testimony, I find that the One Month Notice was duly served to Tenant J.B. on June 30, 2020, pursuant to section 88 of the *Act*.

I further find that the tenant did not make an application pursuant to section 47(4) of the *Act* within 10 days of receiving the One Month Notice. In accordance with section 47(5) of the *Act*, due to the failure of the tenant to take this action within 10 days, I find the tenant is conclusively presumed to have accepted that the tenancy ended on July 31, 2020, the effective date on the One Month Notice. In this case, the tenant and anyone on the premises were required to vacate the premises by July 31, 2020. As this has not occurred, I find the landlord is entitled to a two (2) day Order of Possession.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. Based on the undisputed affirmed testimony and evidence provided by the landlord, I find that the landlord is entitled to a monetary award in the amount of \$4,950.00 for unpaid rent owing from May 2020, June 2020, July 2020 and August 2020.

Pursuant to section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period. As the landlord has been successful in this application, I allow them to recover the filing fee.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) or anyone on the premises 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 section 67 of the *Act*, I grant a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent, to retain the tenant's security deposit and to recover the filing fee for this Application:

Item	Amount
Unpaid May 2020 Rent	\$550.00
Unpaid June 2020 Rent	1,200.00
Unpaid July 2020 Rent	1,500.00
Unpaid August 2020 Rent	1,700.00
Less the Security Deposit	-800.00
Filing Fee for this application	100.00
<b>Total Monetary Order</b>	<b>\$4,250.00</b>

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: September 04, 2020

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Residential Tenancy Branch