



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Landlord under the Residential Tenancy Act (the Act), seeking:

- An order of possession for an uncontested One Month Notice to End tenancy for Cause (the One Month Notice);
- Unpaid rent;
- Compensation for monetary loss or other money owed;
- Recovery of the filing fee; and
- Authorization to withhold the security deposit for money owed.

The hearing was convened by telephone conference call and was attended by the Landlord and their Legal Counsel, both of whom provided affirmed testimony. No one appeared on behalf of the Tenant. The Landlord and their Legal Counsel were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondent must be served with a copy of the Application and Notice of Hearing. As neither the Tenant nor an acting on their behalf attended the hearing, I confirmed service of these documents as explained below.

The Landlord testified that the Application, the Notice of Hearing, and the documentary evidence before me was personally served on the Tenant on July 31, 2020, and submitted a handwritten document signed by themselves and the Tenant confirming personal service on July 31, 2020. As a result, I find that the Tenant was served the above noted documents in accordance with the *Act* and the Rules of Procedure on

July 31, 2020. Pursuant to rule 7.3 of the Rules of Procedure, the hearing proceeded as scheduled, despite the absence of the Tenant, who was duly served with notice of the hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure; however, I refer only to the relevant and determinative facts, evidence and issues in this decision.

At the request of the Landlord, copies of the decision and any orders issued in their favor will be emailed to them and their Legal Counsel at the email addresses confirmed in the hearing.

### Preliminary Matters

#### Preliminary Matter #1

Although the given name of the landlord in the tenancy agreement does not match the given name of the applicant, during the hearing the applicant stated that they are the same person listed as the landlord in the application, and that the tenancy agreement lists a nickname used by them.

Based on the uncontested and affirmed testimony of the applicant, I am satisfied that they are the landlord listed in the tenancy agreement in the documentary evidence before me and I have therefore referred to them as the Landlord in this decision.

#### Preliminary matter #2

The Landlord and their Legal Counsel stated that the amount of outstanding rent has increased since the Application was filed and therefore sought to amend the Application in the hearing to increase the amount of the monetary claim to account for the additional outstanding rent owed.

Rule 4.2 of the Rules of Procedure states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application was made, the Application may be amended at the hearing. I therefore amended the application to include outstanding rent for August and September 2020.

Preliminary Matter #3

The Landlord withdrew their request for recovery of the filing fee as they stated that one was not paid. The Application was amended accordingly.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession Pursuant to section 55(2)(b) of the Act?

Is the Landlord entitled to unpaid rent?

Is the Landlord entitled to compensation for monetary loss or other money owed?

Is the Landlord entitled to retain the security deposit for unpaid rent and other money owed?

Background and Evidence

The tenancy agreement in the documentary evidence before me, signed by both parties on February 11, 2020, states that the fixed term tenancy commenced on February 13, 2020, and was set to end on August 31, 2020. It states that rent in the amount of \$680.00 is due on the first day of each month, and that a security deposit in the amount of \$340.00 was paid, which the Landlord still holds. The addendum to the tenancy agreement also states that a \$25.00 late fee will be charged each month that rent is not received in full on the first day of the month.

During the hearing the Landlord and their Legal Counsel stated that the Tenant rents only a room in the rental unit, and shares common living space with the other tenants of the rental unit. The Landlord stated that on July 2, 2020, a One Month Notice was posted to the Tenant's door. In support of this testimony the Landlord submitted a signed and witnessed proof of service document confirming that the One Month Notice was served as described above.

The One Month Notice in the documentary evidence before me is in writing on the approved form, is signed and dated July 2, 2020, has an effective date of August 31, 2020, and states the following grounds for ending the tenancy:

- the tenant or a person permitted on the residential property by the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant; and
- the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property

Under the details of cause section, the Landlord stated the following:

<b>Details of Causes(s): Describe what, where and who caused the issue and include dates/times, names etc. This information is required. An arbitrator may cancel the notice if details are not provided.</b>
<b>Details of the Event(s):</b> May 1, 2020, Theresa Reed sent a letter to complain that Corey shout, swear, stomp, slamming doors, felt afraid, can't sleep, bring a dog into the no-pet allowing house, no respect the house rules May 28, 2020, Rosemarie sent a letter to complain that Corey smoke weeds inside the house causing her dizziness, headache, nausea, vomiting, can't sleep, Health worry May 30, 2020, Landlord gave Corey a warning letter to stop smoke in the house by posting it in front of door and emailing to Corey June 1, 2020, Mohammad sent a letter to complain that Corey still smoke inside the house causing strong smell, can't sleep, Health worry June 1, 2020, Rosemarie sent a letter to complain that Corey still smoke inside the house causing Strong smell, can't sleep June 9, 2020, Mohammad sent a letter to complain that Corey still smoke inside the house causing odor/bad smell, can't sleep, Health worry June 16, 2020, Rosemarie sent a text message to complain that Corey still smoke inside the house causing bad smell June 24, 2020, Mohammad sent a text message to complain that Corey still smoke inside the house causing horrible smell during these days June 24, 2020, Rosemarie sent a text message to complain that Corey still smoke inside the house causing bad smell in most of time, using laundry when he shouldn't be

The Landlord and their Legal Counsel stated that as the Tenant did not file an Application for Dispute Resolution seeking to dispute the One Month Notice within the prescribed time period, the Landlord is entitled to an order of possession.

The Landlord and their Legal Counsel stated that only \$600.00 was paid in rent by the Tenant for April 2020 and that no further rent was received. As a result, they stated that \$4,000.00 in outstanding rent is owed by the Tenant for April – September 2020. They also sated that \$150.00 in late fees are owed, charged at \$25.00 per month, as set out in the addendum to the tenancy agreement.

As no rent has been paid in many months and the effective date of the One Month Notice has passed, the Landlord sought an Order of Possession for the rental unit as soon as possible.

No one appeared on behalf of the Tenant to provide any evidence or testimony for my consideration.

### Analysis

Based on the uncontested and affirmed testimony of the Landlord and the documentary evidence before me, I am satisfied that the One Month Notice was posted to the Tenant's door on July 2, 2020. Pursuant to section 90(c) of the Act, I therefore deem it served on the Tenant July 5, 2020, three days after it was posted to their door.

As there is no evidence before me that the tenant disputed the One Month Notice within the prescribed period set out under section 47(4) of the Act, I therefore find that the Tenant was conclusively presumed to have accepted the One Month Notice and was therefore required to vacate the rental unit in compliance with it, pursuant to section 47(5) of the Act. Although the effective date of the One Month Notice does not comply with the minimum time period set out under section 47(2) of the Act, I find that the effective date is automatically corrected to the earliest date that does, August 31, 2020, pursuant to section 53 of the Act.

As the One Month Notice is in writing on the approved form, signed and dated by the Landlord, gives an effective date for the notice, contains the address for the rental unit and the grounds for ending the tenancy, I find that it complies with section 52 of the Act. Based on the above, and as the corrected effective date of the One Month Notice has passed, I therefore find that the Landlord is entitled to an Order of Possession for the rental unit effective two days after service on the Tenant, pursuant to section 55(2)(b) of the Act.

I accept the uncontested and affirmed testimony and documentary evidence before me regarding outstanding rent and late fees, and I therefore find that the Landlord is entitled to \$4,000.00 in unpaid rent and \$150.00 in unpaid late fees. Pursuant to section 72 of the Act, I authorize the Landlord to withhold the \$340.00 security deposit in partial repayment of the above owed amounts. Pursuant to section 67 of the Act, the Landlord is therefore entitled to a Monetary order in the amount of \$3,810.00; \$4,150.00 for outstanding rent and late fees, less the \$340.00 security deposit retained.

### Conclusion

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **two (2) days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order

may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of **\$3,810.00**. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant 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: September 4, 2020

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Residential Tenancy Branch