



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

**MNRL-S, OPL, FFL, OPR**

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 10-Day Notice to End Tenancy for Unpaid Rent ("Ten-Day Notice ") pursuant to sections 46 and 55;
- An order of possession under a Two Month Notice to End Tenancy for Landlord's Use ("Two Month Notice") pursuant to sections 48 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 and was given a full opportunity to be heard, to present affirmed testimony, make submissions, and call witnesses. I explained the hearing process and provided the landlord with an opportunity to ask questions.

The tenant did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 32 minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant was provided.

The landlord provided affirmed testimony the landlord personally served the tenant with the Notice of Hearing and Evidence Package on August 11, 2020. The landlord testified

he served the documents in the presence of his wife EW; he submitted a witnessed Proof of Service document in the RTB form.

Further to the affirmed testimony of the landlord and the supporting document, I find the landlord has served the tenant as required under the Act.

### *Preliminary Issue*

The landlord explained the landlord served the tenant with the Ten-Day Notice after this application was filed. Accordingly, the landlord withdrew this claim with leave to reapply.

### Issue(s) to be Decided

Is the landlord entitled to 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 of possession under a Two Month Notice to End Tenancy for Landlord's Use ("Two Month Notice") pursuant to sections 48 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.

### Background and Evidence

The landlord provided the following uncontradicted testimony. The month-to-month tenancy began on September 1, 2019 for rent of \$1,895.00 payable on the first and the 15<sup>th</sup> of the month in equal amounts. The tenant provided a security deposit of \$800.00 which the landlord holds. The landlord submitted a copy of the signed tenancy agreement.

The landlord testified the Two Month Notice to End Tenancy for Landlord's Use (the "Two Month Notice") dated July 15, 2020 stating the landlord intended to occupy the unit was personally served on the tenant on that date with an effective date of

September 15, 2020, corrected to September 30, 2020. The landlord submitted a copy of the Notice which was in the RTB form.

The landlord testified the tenant immediately informed the landlord she would not be moving out or paying any more rent. The landlord testified the tenant did not file an application to dispute the Two Month Notice. The landlord testified the tenant did not pay rent for the months of August and September 2020 and continues to reside in the premises.

### Analysis

The landlord provided undisputed evidence at this hearing as the tenant did not attend. I find that the tenant was served with the Two Month Notice on July 15, 2020. I accept the landlord's evidence that the tenant did not dispute the Two Month Notice within 15 days.

I am satisfied the form and content of the landlord's Two Month Notice complies with Section 52 of the *Act* and was served in accordance with Section 88 of the *Act*.

Accordingly, I find that the tenant is conclusively presumed under Section 49(9) of the *Act* to have accepted that the tenancy ended on the effective date of the Two Month Notice corrected to September 30, 2020.

Therefore, I find that the landlord is entitled to an Order of Possession, pursuant to Section 55 of the *Act*. I issue an Order of Possession effective at 1:00 PM on September 30, 2020.

The landlord testified that the tenant continues to reside in the premises and rent for the months of August and September 2020 is unpaid.

Section 51 of the *Act* states that a tenant is entitled to one month's rent as compensation when the landlord issued a Two Month Notice; the section states:

**51** (1)A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

I therefore grant a Monetary Award to the landlord in the amount of one month's rent being \$1,825.00. As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

In accordance with the offsetting provisions of Section 72 of the *Act*, I allow the landlord to retain \$800.00 of the tenant's security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

In summary, I grant the landlord a Monetary Order as follows:

ITEM	AMOUNT
One month's rent	\$1,825.00
Reimbursement filing fee	\$100.00
(Less security deposit)	(\$800.00)
<b>TOTAL MONETARY ORDER</b>	<b>\$1,125.00</b>

#### Conclusion

I grant an Order of Possession to the landlord effective 1:00 PM on September 30, 2020. This Order must be served on the tenant. Should the tenant 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.

I grant the landlord a Monetary Order in the amount of **\$1,125.00**. This Order must be served on the tenant. If the tenant fails to comply with this Order the landlord may file the Order in the Provincial Court (Small Claims) to 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: September 25, 2020

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Residential Tenancy Branch