



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, MNDCL -S, FFL

### Introduction

This hearing was scheduled to deal with a landlord's application for an Order of Possession for cause. The landlord appeared at the hearing; however, there was no appearance by the tenant despite leaving the teleconference call open at least 15 minutes to give the tenant the opportunity to appear.

Since the tenant did not appear, I explored service of the hearing package upon the tenant. The landlord testified he served the hearing package to the tenant by registered mail sent on August 31, 2020. The landlord provided the registered mail print-out from Canada Post, including the tracking number, and it showed delivery of the registered mail on September 4, 2020. The landlord confirmed the tenant continues to reside in the rental unit. Based on the above, I was satisfied the tenant was duly served with notification of this hearing and I continued to hear from the landlord without the tenant present.

I noted the landlord had submitted an Amendment to an Application for Dispute Resolution to seek recovery of unpaid and/or loss of rent for the month of September 2020. The landlord acknowledged he did not serve the Amendment upon the tenant. I could not consider accepting the Amendment to an Application for Dispute Resolution since it was not served upon the tenant. However, Rule 4.2 of the Rules of Procedure permit me to amend an application during the hearing where:

- In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

Having heard the tenant continues to occupy the rental unit and rent was not paid for the month of September 2020, I was of the view the landlord's request to recover loss of rent for September 2020 at this hearing ought to be reasonably anticipated by the tenant and I amended the application to include such a claim during the hearing.

The landlord also requested authorization to retain the tenant's security deposit. I find that request to be non-prejudicial to the tenant and reasonably foreseeable. Therefore, I amended the application to include such a request.

#### Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for cause?
2. Is the landlord entitled to recover loss of rent for the month of September 2020?
3. Is the landlord authorized to retain the tenant's security deposit?
4. Recovery of the filing fee.

#### Background and Evidence

The parties entered into a tenancy agreement starting December 20, 2017. The tenant paid a security deposit of \$475.00 and the rent was originally set at \$950.00 payable on the first day of every month. The monthly rent increased periodically and since January 1, 2020 it has been \$999.05.

On July 31, 2020 the landlord's agent, referred to by initials RP, personally served the tenant with the subject One Month Notice to End Tenancy for Cause ("1 Month Notice"). The 1 Month Notice is in the approved form and is duly completed. The 1 Month Notice has an effective date of August 31, 2020. The tenant signed a Proof of Service acknowledging receipt of the 1 Month Notice. The tenant did not file an Application for Dispute Resolution to dispute the 1 Month Notice.

The tenant did not return possession of the rental unit to the landlord by August 31, 2020 and the tenant continues to occupy the rental unit.

The landlord seeks an Order of Possession effective as soon as possible and recovery of loss of rent for the month of September 2020.

Documentary evidence provided with this Application for Dispute Resolution included a copy of the tenancy agreement; Notices of Rent Increase; the 1 Month Notice; and, a signed Proof of Service for the 1 Month Notice.

### Analysis

Pursuant to section 47(4) and (5) of the Act, where a tenant receives a 1 Month Notice, the tenant has 10 days after receiving the notice to file an Application for Dispute Resolution to dispute it. If the tenant does not file to dispute the 1 Month Notice, the tenant is conclusively presumed to have accepted that the tenancy will end on the effective date of the notice and must vacate the rental unit.

The landlord is making this Application for Dispute Resolution under section 55(2)(b) of the Act, which provides as follows:

- (2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:
  - (b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;

I am satisfied by the unopposed evidence before me that a 1 Month Notice was duly served upon the tenant on July 31, 2020. As such, I find the tenant had until August 10, 2020 to dispute the 1 Month Notice and she did not.

I have reviewed the 1 Month Notice and I am satisfied it meets the form and content requirements of the Act. Accordingly, I find the tenancy came to an end on August 31, 2020 and the landlord is entitled to regain possession of the rental unit.

Provided to the landlord with this decision is an Order of Possession effective two days after service upon the tenant.

I further award the landlord recovery of loss of rent for the month of September 2020 since the tenant failed to vacate the rental unit by August 31, 2020 causing the landlord to suffer a loss of rent for the month of September 2020.

I award the landlord recovery of the \$100.00 filing fee paid for this Application for Dispute Resolution.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the amounts awarded to the landlord in this decision.

In keeping with the above, I provide the landlord with a Monetary Order to serve and enforce upon the tenant in the net amount calculated as follows:

Loss of rent – September 2020	\$999.05
Filing fee	100.00
Less: security deposit	<u>(475.00)</u>
Monetary Ordre	\$624.05

### Conclusion

The landlord is provided an Order of Possession effective two (2) days after service upon the tenant.

The landlord is awarded recovery of loss of rent for September 2020 and is authorized to retain the tenant's security deposit. The landlord is provided a Monetary Order in the net amount of \$624.05 to sere upon the tenant.

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 29, 2020

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Residential Tenancy Branch