



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, MNDL-S, MNRL-S, (MNDC), FFL

### Introduction

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

- an order of possession for cause pursuant to section 55;
- a monetary order for unpaid rent, for damage to the rental unit, 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;
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

The landlord attended the hearing via conference call and provided undisputed affirmed testimony. The tenants did not attend or submit any documentary evidence. The landlord stated that the tenants were served with the notice of hearing package via Canada Post Registered Mail on August 31, 2020. The landlord stated that the submitted documentary evidence was posted to the tenants' rental unit door. The landlord stated that the tenants were served with the amendment to the application for dispute in person on September 24, 2020. I accept the undisputed affirmed testimony of the landlord and find that the tenants were sufficiently served as per sections 88 and 89 of the Act. Despite not attending the tenants are deemed served as per section 90 of the Act.

At the outset, the landlord's application was clarified. Extensive discussion resulted in the landlord confirming that his amended monetary claim was for \$1,800.95 for:

\$100.95      Damages, Fix Front door

\$1,600.00	Unpaid Rent, August 2020
\$100.00	Filing Fee

The landlord was notified that he was at liberty to file an application for the outstanding amounts listed on his monetary worksheet as they were not included in the application for dispute.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession for cause?

Is the landlord entitled to a monetary order for unpaid rent, for damage, for money owed or compensation for damage or loss and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on June 1, 2020 on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated May 9, 2020. The monthly rent is \$1,600.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$800.00 was paid.

The landlord seeks an order of possession for cause and a monetary claim of \$1,800.95 for:

\$100.95	Damages, Fix Front door
\$1,600.00	Unpaid Rent, August 2020
\$100.00	Filing Fee

The landlord provided undisputed affirmed testimony that on August 12, 2020, the landlord served the tenant with the 1 Month Notice dated August 12, 2020 by posting it to the rental unit door. The 1 Month Notice sets out an effective end of tenancy date of October 31, 2020 and that it was being given as:

- the tenant is repeatedly late paying rent;
- the tenant or person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord;

- seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The details of cause state:

*I have three letters from strata with 12 incidents from other tenants in the complex that I can send on request, I have given a list to the tenants. Some of the issues are June 23-24<sup>th</sup> strong chemical smells, someone on balcony throwing nails and plastic off balcony. June 26/20 – 7:32pm male around back yells up to be let in, another occupant noticed he was smoking in the court yard with is against strata regulations, he was asked if he lived here, said he was visiting C330. June 27/20 at 3pm male occupant outside front lobby asking to be let into building then asked to use cell phone he then asked to follow him to his suite he declined. Occupants up all night stomping around in all bedrooms during the night. Male tenant continuously goes around back and stands outside and shouts up to the unit to be let in at all hours including 1am to 2am. The occupants of the unit below no longer feel safe in their own home. They are more quiet during the day but quickly become active in the later hours of the day. Strata threatening \$200 fines. I discussed some of the issues on July 1/20. I wanted to set up a meeting - me, property manager and them to on July 17/20 but they declined and after said they did not want to meet only communicate through email or text. I then put a notice of complaint on door July 20<sup>th</sup> and tried to set a meeting with them. Also gave them a notice on June 4/20 for a monthly inspection on August 1/20 they postponed until Aug 3/20 which they cancelled said would not be there I said I would come they said if I did they would call the police, said they know the law. First month rent received June 9/20 and short \$20. July rent paid July 8/20 Still have no August rent.*

[reproduced as written]

During the hearing the landlord was advised that pursuant to Ministerial Order No. M195 of the Emergency Program Act, Part 2 of the Residential Tenancy Act, Section 3 Notices to end tenancy states in part,

(2) A landlord must not give a tenant notice to end a tenancy under section 47(1) [landlord's notice: cause] of the Residential Tenancy Act in respect of a reason that relates to the affected rent being unpaid, including one or more of the following reasons:

(a) one or more payments of the affected rent are late;

In this case, the landlord stated that the tenant has been late paying rent since the tenancy began on June 1, 2020. The landlord stated that the tenants have also failed to pay rent on time for July 2020 and no rent has been paid for August 2020.

As such, this reason for cause selected by the landlord is dismissed.

On the second reason for cause the landlord has provided undisputed affirmed testimony that the strata has received numerous complaints from other occupants of the building resulting in the strata cautioning the landlord and tenants that fines can be issued. The landlord stated that he has received copies of more than 20 complaints by occupants of the building regarding excessive noise which were provided as evidence for this hearing. The landlord provided a excerpt from these complaints that on:

July 13, 2020	Noise Complaint, fighting/yelling by tenant/occupants of unit
July 14, 2020	Tenant climbing down outside of balcony onto unit below
July 15, 2020	Tenants throwing objects out of unit
July 16, 2020	Noise Complaint, fighting/yelling

The landlord also claims that the tenants are jeopardizing the health or safety or lawful right of the occupants/landlord. The landlord stated that the occupant of another unit in the building has expressed a concern that she fears for her own safety. The landlord stated that the other occupant stated that because of "Covid" the tenants have "confronted" the other occupant by stepping up very close to them without a mask.

The landlord also claims that the tenants have damaged the front door requiring repairs. The landlord has submitted a handwritten receipt for the repair of the front door for a cost of \$100.95. The landlord stated that a new face plate, deadbolt and doorknobs were replaced.

The landlord also claims that the tenants have failed to pay rent of \$1,600.00 for August 2020.

### Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

I accept the undisputed affirmed evidence of the landlord and find that the tenants were served with the notice of hearing package on August 12, 2020 posted to the rental unit door. The tenants are deemed to have been served 3 days later on August 15, 2020 as per section 90 of the Act.

The landlord provided undisputed affirmed testimony that the strata has received over 20 complaints by occupants of the building concerning these tenants that they are unreasonably disturbing them based upon the numerous excessive noise complaints.

Pursuant to section 47 (5) of the Act, the tenants having been served with the notice have not filed an application for dispute resolution within 10 days of receiving it is conclusively presumed to have accepted that the tenancy ends on the effective end of tenancy date, in this case October 31, 2020. The landlord is granted an 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. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I accept the landlord's undisputed affirmed and find that the landlord has established a claim for \$100.95 for the cost of fixing the damaged front door as claimed.

On the landlord's claim of unpaid rent for \$1,600.00, I find that the landlord has been successful. The landlord provided undisputed affirmed evidence that the tenants failed to pay rent of \$1,600.00 for August 2020. Despite Ministerial Order No. M195, Emergency Program Act, Residential Tenancy Order No. 2 states in part, "affected rent" means rent that becomes due by a tenant in accordance with a tenancy agreement during the emergency period. This tenancy is now ended as per the order of possession issued this day. As such, the landlord is entitled to recovery of unpaid rent for August 2020.

The landlord has established a total monetary claim of \$1,700.95.

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee. I authorize the landlord to retain the \$800.00 security deposit in partial satisfaction of this claim.

Conclusion

The landlord is granted an order of possession.

The landlord is granted a monetary order for \$1,000.95.

These orders must be served upon the tenants. Should the tenants fail to comply with these orders, these orders may be filed in the Supreme Court of British Columbia and the Small Claims Division of the Provincial Court of British Columbia.

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: October 09, 2020

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Residential Tenancy Branch