



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

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

### Introduction

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

- an Order of Possession for cause based on the 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 55;
- an Order of Possession for unpaid rent based on two 10 Day Notices to End Tenancy for Unpaid Rent (the 10 Day Notices) pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for losses under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's 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 tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:19 a.m. in order to enable the tenant to call into 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. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the teleconference system that the landlord, their agent and I were the only ones who had called into this teleconference. Although the landlord said that their mother was also available to provide sworn testimony if necessary, there was no need to do so, as the tenant did not call into the hearing to dispute the landlord's application.

The landlord amended their original application on September 14, 2020, by adding a monetary component to their application for unpaid rent that became owing as of September 1, 2020. This amended application sought a monetary award of \$1,900.00

for rent that was then owing and the recovery of four \$100.00 fines levied by the strata council for the tenant's contravention of strata bylaws for this building.

The landlord gave sworn testimony and provided written evidence that they sent the tenant the 1 Month Notice by registered mail on August 7, 2020. They provided copies of the Canada Post Customer Receipt and Online Tracking information to confirm this registered mailing and their assertion that this mailing was successfully delivered on August 12, 2020. In accordance with sections 88 and 90 of the *Act*, I find that the 1 Month Notice was deemed served to the tenant on August 12, 2020, the fifth day after its registered mailing.

The landlord provided sworn testimony and written evidence in the form of a signed and witnessed Proof of Service document that they posted a 10 Day Notice on the tenant's door on September 2, 2020 and a second one on October 2, 2020. I find that the tenant was deemed served with both of these notices on the third day after their posting in accordance with sections 88 and 90 of the *Act*.

The landlord's agent testified that a copy of the landlord's original dispute resolution hearing package and written evidence in existence at that time was sent to the tenant by registered mail on September 3, 2020. They provided the Canada Post Tracking Number to confirm this mailing. The landlord testified that they sent the tenant a copy of their amended application and the additional written evidence that existed at that time by registered mail on September 15, 2020. The landlord provided sworn testimony supported by written evidence of the Canada Post Tracking Number regarding this mailing. In accordance with sections 88, 89 and 90 of the *Act*, I find that these documents were deemed served to the tenant on the fifth day after their registered mailing to the tenant. The tenant did not provide any written evidence for this hearing.

Although the landlord did not amend their application for a monetary award for unpaid rent that became owing as of October 1, 2020, the landlord made a written request and an oral request for additional rent of \$1,500.00 that became owing as of October 1, 2020. Since the tenant would have known that rent became due once more on October 1, 2020 and remained in occupation of the rental unit after the effective dates identified on the 1 Month Notice and the first 10 Day Notice, I allowed the landlord's request to seek additional rent that became owing as a result of the tenant's overholding of the rental unit beyond the effective dates on the landlord's notices to end tenancy.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent or for cause? Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord testified that the parties signed a one-year fixed term tenancy that is scheduled to run from March 1, 2020 until February 28, 2021. Monthly rent is set at \$1,500.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$750.00 security deposit paid when this tenancy began.

The landlord entered into written evidence a copy of the 1 Month Notice requiring the tenant to end this tenancy by September 30, 2020. In the 1 Month Notice, the landlord cited the following reasons for the issuance of the Notice:

*Tenant or a person permitted on the property by the tenant has:*

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*

*Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

The landlord's subsequent 10 Day Notice identified \$1,500.00 in unpaid rent as owing as of September 2, 2020, the date of the first 10 Day Notice. The second 10 Day Notice issued on October 2, 2020, identified an additional \$1,500.00 as owing for rent that became due on that date.

The landlord provided written evidence and sworn testimony that the tenant has not paid anything towards their rent for the months of September or October 2020. The landlord also testified that the tenant has not applied to cancel any of the three Notices to End Tenancy served to the tenant since the beginning of August 2020.

The landlord's amended application for a monetary award of \$3,400.00 included unpaid rent of \$1,500.00 for each of September and October 2020, and reimbursement of four

\$100.00 fines imposed by the strata council for this building arising out of contraventions of strata rules by the tenant.

### Analysis

Section 26(1) of the *Act* establishes that “a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.” Section 46(1) of the *Act* establishes how a landlord may end a tenancy for unpaid rent “by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.”

Section 46 (4) (b) of the *Act* provides that upon receipt of a 10 Day Notice the tenant may, within five days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. I find that the tenant has failed to file an application for dispute resolution within the five days of service granted under section 46 (4) of the *Act*. Accordingly, I find that the tenant is conclusively presumed under section 46 (5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, September 15, 2020.

I should also add that similar provisions are in place requiring a tenant to apply to cancel a 1 Month Notice within 10 days of receiving such a notice. As the tenant did not apply to cancel the 1 Month Notice, they were also conclusively presumed under section 47(5) of the *Act* to have accepted that their tenancy ended on September 30, 2020, the effective date identified by the landlord on the 1 Month Notice.

Sections 46(2) and 47(3) of the *Act* requires that “a notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.”

Section 52 of the *Act* reads in part as follows:

*In order to be effective, a notice to end tenancy must be in writing and must...*

- (a) be signed and dated by the landlord or tenant giving the notice,*
- (b) give the address of the rental unit,*
- (c) state the effective date of the notice,*
- (d) except for a notice under section 45(1) or (2) [tenant’s notice], state the grounds for ending the tenancy, and*
- (e) when given by a landlord, be in the approved form.*

I am satisfied that the landlord's Notices to End Tenancy entered into written evidence were on the proper RTB forms and complied with the content requirements of section 52 of the *Act*. For these reasons, I find that the landlord is entitled to an Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit by the time required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Turning to the monetary component of the landlord's application, I note that section 67 of the *Act* establishes that if 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 loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the 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. Section 7(1) of the *Act* establishes that a party who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the other party for damage or loss that results from that failure to comply.

Section 26(1) of the *Act* establishes that "a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent."

There is undisputed sworn testimony supported by written evidence that the tenant has failed to pay any portion of the rent that became owing for September and October 2020. Given the date of this hearing, the fact that the tenant has a fixed term tenancy and the reality that the landlord is unlikely to be able to re-rent these premises to another tenant for any part of October 2020, I allow the landlord's application for a monetary award for unpaid rent and loss of rent for September and October 2020. I allow the landlord's application to recover unpaid rent of \$3,000.00 that is now owing for this tenancy.

There is also undisputed sworn testimony supported by written evidence that the landlord has become responsible for four fines imposed by the strata council for the tenant's failure to abide by the strata bylaws for this building. I allow the landlord's application to recover losses from the tenant totalling \$400.00 that arise from these strata fines.

I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award issued in this decision. Since the landlord has been successful in this application I also allow the landlord to recover their \$100.00 filing fee for this application.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary Order under the following terms, which allows the landlord to recover unpaid rent, loss of rent, losses arising out of this tenancy and their filing fee, and to retain the security deposit for this tenancy:

Item	Amount
Unpaid Rent September 2020	\$1,500.00
Unpaid Rent October 2020	1,500.00
Recovery of Strata Fines (4 at \$100.00 = \$400.00)	400.00
Less Security Deposit	-750.00
Recovery of Filing Fee for this Application	100.00
<b>Total Monetary Order</b>	<b>\$2,750.00</b>

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: October 09, 2020

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Residential Tenancy Branch