



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, MNRL-S, FFL

### Introduction

The landlord filed an Application for Dispute Resolution on September 3, 2020 seeking an order of possession of the rental unit, as well as recovery of money owing for unpaid rent. Additionally, they applied for reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on October 19, 2020.

The landlord attended the telephone conference call hearing; the tenant did not attend. An agent for the landlord attended with the landlord.

To proceed with this hearing, I must be satisfied that the landlord made reasonable attempts to serve the tenant with this Notice of Dispute Resolution Proceeding. This means the landlord must provide proof that the document has been served at a verified address allowed under Section 89 of the *Act*, and I must accept that evidence.

The landlord gave testimony that they delivered the notice of this hearing on September 10, 2020. This was affixed to the door of the unit on that date. Additionally, they provided the Notice to the tenant at a verified, oft-used email that is the primary means of communication between the parties. Prior to the hearing, the landlord provided their evidence to the tenant via registered mail, to the address of the rental unit. This was at the mail address where the tenant resides, in the rental unit.

Based on the submissions of the landlord, I accept the tenants was served notice of this hearing and the landlord’s application in a manner complying with section 89(1)(c) of the *Act*, and the hearing proceeded in the tenant’s absence.

### Preliminary Matter

In the hearing, the landlord described the miscellaneous items left in the rental unit by the tenant. They stated it appears the tenant has no intention of returning the unit, in effect abandoning these personal items.

The Residential Tenancy Regulation B.C. Reg 477/2003 Part 5 governs the situation where there is an abandonment of personal property. There is no means for a landlord to obtain an order under this provision of the legislation; nor is there in the *Act*. The tenant's right to their personal property is not the subject of this hearing and does not form part of this decision or any monetary amount granted.

### Issue(s) to be Decided

Is the landlord entitled to issue an Order of Possession pursuant to sections 47 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

### Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord spoke to the terms of the tenancy agreement, a copy of which was provided as evidence. The tenancy began on December 15, 2019 for a fixed term ending on June 14, 2020. The rent amount was \$1,400 per month payable on the 1<sup>st</sup> of each month. By the end of the tenancy, the payments were split in each month, with another payment of \$700 due on the 15<sup>th</sup> of each month.

The tenant paid a security deposit of \$700 and no pet deposit. The parties signed the agreement on December 15, 2019. The tenant was not in attendance at the hearing to provide any information that challenged that presented by the landlord on these points.

The landlord provided a copy of the One Month Notice to End Tenancy for Cause (the "One-Month Notice"), issued August 19, 2020. This document gave the move-out date of September 20, 2020. This listed the cause as being that where the "tenant is repeatedly late paying rent" and "tenant. . .seriously jeopardized the health or safety or lawful right of another occupant or the landlord."

The landlord explained that the tenant had disassembled the fire alarm equipment in the unit and was the source of noise complaints. On their Application, the landlord provided: "tenant has tampered with fire equipment and verbal told landlord [they] burnt down previous residence." Further: "tenant is disrupting landlord's quiet enjoyment with loud music and parties."

The tenant initially stated they would move out in September. A letter from the landlord (via their agent) to the tenant dated September 7, 2020 was affixed to the rental unit door and also emailed to the tenant. This records that the tenant "verbally agreed to end the lease agreement for September 30<sup>th</sup>, 2020." This also scheduled a move-out inspection for noon on that day. The copy provided by the landlord for this hearing shows the tenant did not sign in the provided space.

When pressed about personal items remaining in the unit, the tenant communicated on September 30 that they "still want their stuff." The landlord had offered to store the tenant's personal items for free; however, the tenant did not respond to this offer.

The landlord's agent testified that the most recent communication with the tenant was days before the hearing; this was a reminder for the tenant to retrieve personal items from the unit. On October 16, after giving a notice to enter, the landlord entered the unit and made a list of items inside.

Turning to the monetary claim, in the hearing the landlord reviewed the late rent payments. They provided that rent for January – February – March 2020 was received late, but fully paid. Their Application states: "Tenant has had numerous more than 3x paying rent late outside of covid dates." Once the tenant received the One-Month Notice in August, there was no payment of rent for September or October. After that, the tenant changed their phone number without informing the landlord, and the only option to communicate was through email.

On their Monetary Order Worksheet dated September 15, 2020, the landlord claims \$700.00. This is for recovery of “short paid rent September 2020” and January February 2020 for which the “late rent cause 1xm” (i.e, the One-Month Notice) was issued. The landlord also claims the \$20.00 cost of replacing keys to the unit – this was in early September and the landlord notified the tenant of this key cost by way of notice posted to the rental unit door.

In the hearing, the landlord provided that they were increasing their monetary claim from the \$533.16 amount that they provided on their initial Application.

They also stated they are foregoing full amounts of rent. This is because of the high likelihood that the tenant would never provide the full amount of monies owing. They amended the amount of their claim to \$700.00, which is the amount of the security deposit. They stated their claim is just to retain the security deposit to recoup some of the amounts owing by the tenant.

### Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if, among other things, one or more of the following applies:

- b) the tenant is repeatedly late paying rent;
- d) The tenant or a person permitted on the residential property by the tenant has
  - ii. seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;

Section 47(4) allows a tenant who receives a notice to end tenancy 10 days to submit an Application for Dispute Resolution to cancel the notice. Section 47(5) stipulates that if a tenant fails to apply within 10 days, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and they must vacate the rental unit.

I have reviewed the Notice, and I find it complies with the form and content requirements of section 52 of the *Act*. I find that the tenants did not dispute the Notice within ten days, pursuant to section 47(4). I find that the tenant is conclusively presumed to have accepted that the tenancy has ended in accordance with section 47(5).

I find the landlord had the authority to issue the Notice under section 47 of the *Act*. I grant the landlord’s request for an Order of Possession under section 55 of the *Act*.

From the evidence and testimony of the landlord, I am satisfied that a tenancy agreement was in place. They provided the specific terms of the rent payments as well as the amount the tenant paid for the security deposit. The TT did not attend the hearing; therefore, there is no evidence before me to show otherwise.

The *Act* section 26 outlines a tenant's duty to pay rent:

- (1) A tenant must pay rent when it is due under the tenancy agreement, whether 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.

I accept the evidence before me that the tenant failed to pay full rent for January 2020 and February 2020. This extended through to the period when the tenancy was ending in September – October 2020. The landlord testified that they tried to get the tenant to pay over quite some time; however, the tenant did not comply.

The landlord provided detailed testimony and evidence in the form of copies of social assistance payments to the tenant throughout 2020. As presented, I find the landlord is entitled to the amount of \$700.00 as they claim.

I find the landlord's claim for replacement of the rental unit keys is valid and substantiated with evidence. They clearly identified this cost to the tenant directly on the invoice dated September 10, 2020.

The *Act* section 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. The landlord has established a claim of \$720.00. After setting off the security deposit amount of \$700.00, there is a balance of \$20.00. I am authorizing the landlord to keep the security deposit and award the balance of \$20.00 as compensation for they key replacement.

As the landlord is successful, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I grant an Order of Possession to the landlord effective ONE DAY after service of the Order on the tenant. Should the tenant fail to comply with the Order, it may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 67 and 72 of the *Act*, I grant the landlord a separate Monetary Order for the recovery of the amounts claimed and the filing fee paid for this application. This amount is \$120.00. 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 *Act*.

Dated: October 20, 2020

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Residential Tenancy Branch