



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 999 HOLDINGS LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **MNRL, OPC, FFL**

### **Introduction**

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

- A monetary order for rent pursuant to section 67;
- An Order of Possession for Cause pursuant to sections 47 and 55; 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 throughout the teleconference hearing to enable the tenant to call in. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord attended the hearing, represented by the owner, JK and the resident manager, NR. The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The resident manager testified that she served the tenant with the Notice of Dispute Resolution Proceedings package by sending it via registered mail to the tenant's residential address on November 6, 2020. The tracking number for the mailing is recorded on the cover page of this decision. I deem the tenant sufficiently served with the Notice of Dispute Resolution Proceedings package on November 11, 2020, five days after it was sent by registered mail in accordance with sections 89 and 90 of the *Act*.

### Preliminary Issue

Rule 4.2 states: in circumstances that can be reasonably 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. The landlord sought to amend her monetary application and I allowed the amendment in accordance with rule 4.2 and section 64(3) of the *Act*.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent?

Can the landlord recover the filing fee?

### Background and Evidence

The landlord gave the following undisputed testimony. The manager attending the hearing today took over management of the building in 2020. The previous manager did not provide her with a copy of the tenant's tenancy agreement, although it is believed the tenancy is relatively new, commencing one or one and a half years ago. The tenant pays \$800.00 rent on the first day of each month. A security deposit of \$400.00 was collected by the landlord which the landlord continues to hold.

The tenant did not pay the \$800.00 rent for the month of April, 2020. The landlord doesn't have paperwork to prove whether the tenant paid for the month of May, and the landlord is not seeking compensation for May's rent at this time.

In June, the tenant paid only \$500.00 of the \$800.00 rent and didn't pay July or August rent. In September, the tenant paid \$200.00, leaving an additional \$600.00 in arrears. The tenant has not paid any rent since then.

On August 26, 2020, the resident manager served the tenant with a repayment plan for the arrears in rent that accrued between March 18<sup>th</sup> and August 17<sup>th</sup> ("*affected rent*"). A copy of the repayment plan was provided as evidence. The landlord testified that the tenant failed to pay the arrears of affected rent as well as the monthly rent of \$800.00 when it became due on October 1, 2020.

On September 18, 2020, the landlord served the tenant with a One Month Notice To End Tenancy for Cause by posting it to the tenant's door. She also provided a second copy of the notice by slipping it under the tenant's door the same day. A copy of the notice was provided as evidence. It is dated September 18, 2020 and provides an

effective date of October 19, 2020. The reason for ending the tenancy states the tenant is repeatedly late paying rent.

### Analysis

I am satisfied the tenant as served with the landlord's One Month Notice To End Tenancy for Cause on September 21, 2020, three days after it was posted to the tenant's door in accordance with sections 88 and 90 of the *Act*.

Sections 47(3)(4) and (5) of the *Act* state:

(3) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(4) A tenant may dispute a Notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the Notice.

(5) If a tenant who has received a Notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

- a) (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and
- b) (b) must vacate the rental unit by that date.

Based on undisputed testimony of the landlord, and the documents provided, I find that the 1 Month Notice complies with the form and content provisions of section 52 of the *Act*, which states that the Notice 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 find that the tenant was served with a Notice that complies with section 52 of the *Act*. Although the tenant had the opportunity to do so, the tenant did not file an application to dispute the Notice within 10 days, by October 1, 2020 or attend the scheduled Dispute Resolution Hearing. Since the tenant did not file for dispute resolution, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice. Since the notice was served upon the tenant on September 21<sup>st</sup>, and rent is payable on the first day of the month, the effective date on the notice could not be any sooner than October 31, 2020. In accordance with section 53 of the *Act*, I correct the effective date to October 31, 2020.

As the corrected effective date of the Notice has already passed, I find that the landlord is entitled to an order of possession which must be served on the tenant as soon as possible, pursuant to section 55 of the *Act*.

Based on the landlord's undisputed testimony and evidence provided, I am satisfied the tenant is in arrears of rent up until the end of October, the last day of the tenancy.

As the tenant continues to occupy the rental unit after the tenancy ended, the tenant is considered an overholding tenant as defined by section 57 of the *Act*. Section 57(3) states a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended. In accordance with that section, the landlord is entitled to compensation for the months of November 2020 to January 2021.

As the landlord's application was successful, the landlord is entitled to recover the \$100.00 filing fee for the cost of this application. Pursuant to the offsetting provisions contained in section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in its entirety in partial satisfaction for a portion of the monetary award granted.

Item	Amount
April 2020	\$800.00
June 2020	\$300.00
July 2020	\$800.00
August 2020	\$800.00
September 2020	\$600.00
October 2020	\$800.00
November 2020	\$800.00
December 2020	\$800.00
January 2021	\$800.00
<b>Sub-Total</b>	<b>\$6,500.00</b>
Filing fee	\$100.00
Less security deposit	(\$400.00)
<b>Total</b>	<b>\$6,200.00</b>

### Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced in the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of **\$6,200.00**.

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: January 22, 2021

---

Residential Tenancy Branch