



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, MNRL-S, FFL

### Introduction

On October 20, 2020, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession based on a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, seeking to apply the security deposit towards this debt pursuant to Section 38 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlord attended the hearing; however, the Tenant did not make an appearance at any point during the 19-minute teleconference. All in attendance provided a solemn affirmation.

The Landlord advised that he served the Tenant with the Notice of Hearing and evidence package by registered mail on October 27, 2020 (the registered mail tracking number is noted on the first page of this Decision). The tracking history indicated that this package was not picked up by the Tenant. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was deemed to have received the Notice of Hearing and evidence package five days after it was mailed. As such, I have accepted the Landlord’s evidence and will consider it when rendering this Decision.

As per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed issues related to the Landlord’s Notice, and the other claims were dismissed. The Landlord is at liberty to apply for any other claims under a new and separate Application.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord advised that the tenancy started on August 15, 2015, that rent was established at \$950.00 per month, and that it was due on the first day of each month. A security deposit of \$475.00 was also paid. A copy of the tenancy agreement was submitted as documentary evidence.

He stated that he served the Notice to the Tenant by registered mail on October 2, 2020 (the registered mail tracking number is noted on the first page of this Decision). The tracking history indicated that this package was not picked up by the Tenant. The reason the Landlord served the Notice is because the "Tenant is repeatedly late paying rent." The effective date of the Notice was December 1, 2020.

The Landlord submitted that the Tenant paid rent according to the following schedule:

- July 22, 2019
- August 2, 2019
- September 3, 2019
- October 7, 2019
- November 7, 2019
- December 16, 2019
- January 10, 2020
- February 11, 2020

- March 23, 2020
- April 9, 2020
- May 5, 2020
- May 11, 2020
- June 11, 2020
- July 7, 2020
- August 5, 2020
- September 4, 2020
- September 15, 2020
- October 20, 2020

He submitted an account of these late payments as documentary evidence and this was also served to the Tenant.

### Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

In considering this matter, I have reviewed the Landlord's Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52 and I find that it is a valid Notice.

I find it important to note that a Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part as follows:

#### ***Landlord's notice: cause***

**47** (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*

*(b) the tenant is repeatedly late paying rent;*

In addition, I note the wording of Policy Guideline #38 provides the following guidance regarding the circumstances whereby a Landlord may end a tenancy where the Tenant is repeatedly late paying rent:

*Three late payments are the minimum number sufficient to justify a notice under these provisions.*

*It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be “repeatedly” late*

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.”

The undisputed evidence before me is that the tenancy agreement requires the Tenant to pay all of the rent by the first of each month. Furthermore, rent was not paid in full on the first of each month more than three times since July 2019. While these instances of repeated late payment of rent also did occur during the “affected rent” period of time due to the COVID pandemic, I am still satisfied that outside of this period, there were at least three instances of late payment of rent.

As there is no evidence before me permitting the Tenant to pay the rent late contrary to the tenancy agreement, I am satisfied that there is a pattern of multiple late payments of rent throughout the months leading up to the issuance of the Notice.

Ultimately, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 47, 52, and 55 of the *Act*. As such, I grant an Order of Possession to the Landlord effective at **1:00 PM on January 31, 2021 after service of this Order** on the Tenant.

As the Landlord was successful in this claim, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain a portion of the security deposit in satisfaction of this debt.

### Conclusion

I grant an Order of Possession to the Landlord effective at **1:00 PM on January 31, 2021 after service of this Order** on the Tenant. Should the Tenant fail to comply with

this Order, this Order may be filed and enforced as an Order of the Supreme 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: January 12, 2021

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Residential Tenancy Branch