



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Cascadia Apartment Rentals Ltd and [tenant  
name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **MNDCL-S, OPN, FFL**

### **Introduction**

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

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agents. The tenant represented themselves with assistance.

The tenant confirmed that they received the landlord's application and evidence. Based on their testimony I find the tenant duly served in accordance with sections 88 and 89 of the *Act*.

The tenant testified that they sent their evidence to the landlord by a text message. The landlord disputed that they received any materials from the tenant.

Section 88 of the *Act* provides the methods by which documents, including evidence can be served. Text message is not an acceptable method under the *Act*. The tenant provided no documentary evidence of having served their evidence by text message and gave no details or even the date of supposed service. In addition, the landlord testified that they have not received anything from the tenant. I am not satisfied that the tenant served the landlord with their evidence in accordance with the *Act* or at all. Consequently, as it would be contrary to the principles of natural justice and procedural

fairness, and prejudicial to the landlord to consider evidence that they have not received, I decline to accept the tenant's evidence.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Award as claimed?

Is the landlord entitled to recover their filing fee from the tenant?

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 arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This periodic tenancy began in 2018. The tenant paid a security deposit of \$600.00 which is held by the landlord. The rental unit is a multi-unit building with adjoining parking areas.

The tenant gave written notice to end the tenancy on November 28, 2020 by an undated letter providing an end of tenancy date of January 31, 2021. A copy of the letter was submitted into evidence. The tenant submits that they subsequently retracted their notice to end the tenancy and have paid rent to reinstate the tenancy. The landlord gave evidence that any payments received have been for use and occupancy only. The landlord seeks an Order of Possession on the basis of the tenant's notice.

The parties agree that there was a fire on the rental premises on November 19, 2020 which began from the tenant's parking space where they stored a boat. The fire which originated from the parking space caused considerable damage to the rental property. The landlord submitted various photographs of the damage as well as invoices for repairs and maintenance that was required. The parties agree that the cause of the fire remains unknown but that there is no question that it originated from the tenant's boat. The parties say that there have been a number of other incidents of fire on or about the rental property which they believe to be unrelated to the incident in the parking area.

The landlord says that the tenant was not permitted to park a boat on the rental property and that but for the presence of the boat the fire would not have occurred causing damage to the rental property.

The landlord says that after the fire of November 2020 they have retained security services to monitor the area. The landlord says that the tenant has had a number of hostile interactions with the security service necessitating their continued presence. The landlord submitted into evidence copies of incident reports from the third party security service.

The tenant disputes that they are the cause of the fire of November 2020 or that they contributed to it by storing their boat in the parking area of the rental property.

### Analysis

Section 45 of the *Act* provides that a tenant may give a notice in writing to end a periodic tenancy. I find the correspondence delivered on November 28, 2020 meets the form and content requirements of section 52 of the *Act* as it provides the address of the rental unit, identifies the parties and gives the effective date of the notice, January 31, 2021.

I do not find the tenant's submission that the notice was subsequently retracted to be supported in the materials or the provisions of the *Act*. It is not open for a party to unilaterally cancel their own notice to end tenancy when it is no longer convenient. I accept the evidence of the landlord that they have not reinstated the tenancy and that any payments that were received were clearly indicated to be for use and occupancy only and that their intention to seek an Order of Possession was communicated to the tenant.

Under the circumstances I find that the tenant provided a valid notice to end tenancy and issue an Order of Possession in the landlord's favour. As the effective date of the notice has passed I issue a notice effective 2 days after service on the tenant.

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.

While I accept the evidence of the parties that there was a significant fire on November 19, 2020 which caused damage to the rental unit originating from the tenant's boat parked on the rental premises, I find there is insufficient evidence to establish that the damage incurred by the landlord is due to any breach on the part of the tenant.

The landlord says that storing a boat in the rental building parking area was not permitted. While this may be a breach of a term of the tenancy agreement, I find little causal link between the breach to the ensuing damage. There is little evidence that the fire was caused by the presence of the boat or that its storage contributed to the fire. There is little evidence that the boat contained any flammable or dangerous materials which caused or exacerbated the fire.

Similarly, I find insufficient evidence that the ongoing requirement for security services is a result of the tenant's conduct. While I accept the evidence that security intervention was necessitated due to the tenant's behaviour on a number of occasions the evidence shows that security was monitoring the rental property after the November 2020 fire. I do not find that the cost of security can be appropriately attributed to the tenant.

I find insufficient evidence that the breach on the part of the tenant caused or contributed to the damage incurred by the landlord. Consequently, I find the landlord has not established their claim on a balance of probabilities

As the landlord was primarily successful in their application they are entitled to recover their filing fee from the tenant. In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain \$100.00 of the tenant's \$600.00 security deposit in satisfaction of the monetary award issued in the landlord's favour.

Conclusion

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

The security deposit for this tenancy is reduced by \$100.00 from \$600.00 to \$500.00.

The balance of the application is dismissed without leave to reapply.

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: February 26, 2021

---

Residential Tenancy Branch