



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFL, MNDL-S, MNRL-S, OPC

### Introduction

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

- an Order of Possession for cause, pursuant to sections 47 and 55;
- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:44 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present affirmed 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. I also confirmed from the teleconference system that the agent and I were the only ones who had called into this teleconference.

The agent confirmed the landlord's email address for service of this decision and orders.

The agent testified that the tenant was served with this application for dispute resolution and evidence via registered mail on August 11, 2021. The agent entered into evidence a Canada Post registered mail receipt stating same. The Canada Post website states that the above package was not picked up by the tenant.

Residential Tenancy Branch Policy Guideline #12 (PG #12) states:

Where a document is served by Registered Mail or Express Post, with signature option, the refusal of the party to accept or pick up the item, does not override the deeming provision. Where the Registered Mail or Express Post, with signature option, is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

Based on the agent's testimony and the registered mail receipt entered into evidence I find that the tenant was served with the landlord's application for dispute resolution and evidence in accordance with section 89 and 88 of the *Act*. Pursuant to section 90 of the *Act* and PG #12, I find that the tenant was deemed to have received the landlord's application for dispute resolution and evidence on August 16, 2021, five days after their mailing. The tenant's refusal to pick up their registered mail does not override the section 90 deeming provision.

Section 64(3)(c) of the *Act* states that subject to the rules of procedure established under section 9 (3) [director's powers and duties], the director may amend an application for dispute resolution or permit an application for dispute resolution to be amended.

Section 4.2 of the Residential Tenancy Branch Rules of Procedure (the "Rules") states that in circumstances that can reasonably be 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. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

The landlord's original application claimed unpaid rent in the amount of \$3,800.00. Since filing for dispute resolution, the agent testified that the amount of rent owed by the tenant has increased to \$5,700.00 for July, August, and September of 2021. The landlord testified that the tenant has not yet paid October 2021's rent which is due today.

I find that in this case the fact that the landlord is seeking compensation for all outstanding rent, not just the amount outstanding on the date the landlord filed the application, should have been reasonably anticipated by the tenant. Therefore, pursuant to section 4.2 of the Rules and section 64 of the *Act*, I amend the landlord's application

to include a monetary claim for all outstanding rent from July to September in the amount of \$5,700.00. I decline to include rent for October 2021 in the amendment because it is not yet overdue as the tenant has until the end of today, October 1, 2021, to pay it.

### Issues to be Decided

1. Is the landlord entitled to an Order of Possession for cause, pursuant to sections 47 and 55 of the *Act*?
2. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
3. Is the landlord entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
4. Is the landlord entitled to retain the tenant's security deposit, pursuant to section 38 of the *Act*?
5. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the agent, not all details of the agent's submissions and arguments are reproduced here. The relevant and important aspects of the agent's claims and my findings are set out below.

The agent testified to the following facts. This tenancy began on March 5, 2021 and is currently ongoing. Monthly rent in the amount of \$1,900.00 is payable on the first day of each month. A security deposit of \$900.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that a One Month Notice to End Tenancy for Cause (the "One Month's Notice") was posted on the tenant's door on July 6, 2021. A witnessed proof of service document stating same was entered into evidence. The tenant did not file an application with the Residential Tenancy Branch to dispute the One Month Notice. The

One Month Notice was entered into evidence and states the following reasons for ending the tenancy:

- Tenant is repeatedly late paying rent.
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.
- Tenant has assigned or sublet the rental unit/site without the landlord's written consent.

The agent testified that the tenant scratched the hallway of the subject rental property and the front door to the subject rental property with her bike. The agent also entered into evidence an email from the strata to the agent dated July 13, 2021 which states:

Also we received the attached estimate to repair all the damages by the tenant. This will be charged to the tenants but the owner will have to pay and then collect form [sic] tenants.

The agent testified that the strata of the subject rental property repaired the walls and door and charged the landlord \$3,580.00 for those repairs. The agent entered into evidence a strata statement of account dated July 16, 2021 which states that a charge of \$3,580.50 for strata repairs has been levied against the landlord.

### Analysis

Based on the One Month Notice entered, the witnessed proof of service document and the agent's testimony, I find that the One Month Notice was posted on the tenant's door on July 6, 2021 in accordance with section 88 of the *Act*. I find that the tenant was deemed served with the One Month Notice on July 9, 2021, three days after its posting. Upon review of the One Month Notice I find that it meets the form and content requirements of section 52 of the *Act*.

Section 47(4) and section 47(5) of the *Act* state that if a tenant who has received a One Month Notice does not make an application for dispute resolution within 10 days after the date the tenant receives the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

Section 53(2) of the *Act* states that if the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section. The earliest date permitted under section 47(2) is August 31, 2021. I find that the corrected effective date of the One Month Notice is August 31, 2021.

The tenant did not dispute the Notice within 10 days of receiving it. I find that, pursuant to section 47(5) of the *Act*, the tenant is conclusively presumed to have accepted that the tenancy ended on the corrected effective date of the Notice, that being August 31, 2021. As the tenant did not vacate the subject rental property on that date, I award the landlord a two-day 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 within the two days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. Pursuant to section 26(1) of the *Act*, I find that the tenant was obligated to pay the monthly rent in the amount of \$1,900.00 on the first day of each month. Based on the undisputed testimony of the agent I find that the tenant did not pay rent in accordance with section 26(1) of the *Act* and owes the landlord \$5,700.00 in unpaid rent from July to September 2021.

Section 67 of the *Act* states:

Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the applicant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;

3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Section 32(3) of the *Act* states:

A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Based on the undisputed testimony of the agent, I find that the tenant damaged the hallway leading to the subject rental property and the door of the subject rental property. I find the tenant failed to repair the damage and this failure resulted in a measurable loss of \$3,580.00 to the landlord which is evidenced by the statement of account. No mitigation issues were presented in this hearing. I find, pursuant to section 67 of the *Act*, that the landlord is entitled to recover the \$3,580.00 from the tenant.

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit due to the tenant. I find that the landlord is entitled to retain the tenant's entire security deposit in the amount of \$900.00 in part satisfaction of the landlord's monetary claim against the tenant.

As the landlord was successful in this application for dispute resolution, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

### Conclusion

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
Unpaid rent July to September 2021	\$5,700.00
Strata repairs	\$3,580.00
Filing fee	\$100.00
Less security deposit	-\$900.00
<b>TOTAL</b>	<b>\$1,402.00</b>

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.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service 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: October 01, 2021

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Residential Tenancy Branch