



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding First Service Residential  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** FFL OPC MNRL-S

### **Introduction**

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

- an Order of Possession for cause, pursuant to section 55;
- a monetary order for unpaid rent or money owed pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

While the landlord's agents, DS and SH, attended the hearing by way of conference call, the tenant did not. I waited until 9:40 a.m. to enable the tenant to participate in this scheduled hearing for 9:30 am. The landlord's agent 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. During the hearing, I also confirmed from the online teleconference system that the landlord's agents and I were the only ones who had called into this teleconference.

The landlords were clearly informed of the RTB Rules of Procedure Rule 6.11 which prohibits the recording of a dispute resolution hearing. The landlords confirmed that they understood.

The landlords confirmed that the tenant was served with the landlord's application for dispute resolution hearing package on September 13, 2021 by way of registered mail. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant deemed served with the landlord's application and evidence on September 18, 2021, five days after mailing. The tenant did not submit any written evidence for this hearing.

The landlords provided undisputed testimony that the tenant was served with the landlord's 1 Month Notice to End Tenancy For Cause ('1 Month Notice') on August 11, 2021 by way of posting the 1 Month Notice on the tenant's door. In accordance with

sections 88 and 90 of the *Act*, I find that the tenant deemed served with the 1 Month Notice on August 14, 2021, 3 days after posting.

The landlord testified that the tenant has not paid any rent since the application was filed, and requested an amendment to include the unpaid rent and parking fees accrued since the application was filed on August 25, 2021. RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made. In this case, I find that it can be reasonably anticipated that the tenant owes \$2,150.00 in monthly rent as well as \$50.00 per month for parking. On this basis, I have accepted the landlord's request to amend their original application to include the additional \$11,000 in unpaid rent and parking fees that was owed at the time this hearing was convened.

### **Issue(s) to be Decided**

Is the landlord entitled to an Order of Possession for cause?

Is the landlord entitled to monetary compensation for unpaid rent or money owed?

Is the landlord entitled to recover their filing fee for this application?

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed term tenancy began on January 8, 2021, with monthly rent set at \$2,150.00 payable on the first of the month. The tenant pays \$50.00 per month for a parking spot. The landlord collected a security and pet damage deposit in the amount of \$1,075.00, which the landlord still holds.

The landlord served the tenant with a 1 Month Notice to End Tenancy on August 11, 2021 on the following grounds: The tenant is repeatedly late paying rent. The landlord testified that the tenant was late paying rent for March, June, and August 2021. The landlord testified that the tenant has failed to pay rent since the 1 Month Notice was served, and now owes the original unpaid rent, NSF charges, and unpaid parking fees of \$2,250.00 plus the \$11,000.00 in unpaid rent and parking for the months of September 2021 through to January 2022. The landlord submitted a ledger of the

outstanding payments for this tenancy up to and including August 10, 2021. The landlord also requested recovery of the filing fee for this application, as well as another application that was previously filed in relation to a 10 day Notice for Unpaid Rent.

### **Analysis**

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. I find that the tenant has failed to file an application for dispute resolution within the ten days of service granted under section 47(4) of the *Act*. Accordingly, I find that the tenant is conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 1 Month Notice, September 30, 2021.

A copy of the 1 Month Notice was submitted by the landlord for this hearing, and I find that the landlord's 1 Month Notice complies with 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 am also satisfied that the landlord had established that the tenant had paid the rent late on multiple occasions, and had stopped paying rent altogether for this tenancy.

As the tenant has not vacated the rental unit, I find that the landlord is entitled to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*.

**Section 26** of the *Act*, in part, states as follows:

#### **Rules about payment and non-payment of rent**

- 26** (1) 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 landlord provided undisputed evidence that the tenant now owes a balance of \$13,250.00 in unpaid rent, parking fees, and NSF charges. On this basis, I allow the landlord a monetary order in order to recover this amount.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the landlord was successful with his application, I allow the landlord to recover the filing fee paid for this application. The landlord also applied to recover the filing fee for another file where the application was withdrawn. As noted, the filing fee is granted only after a hearing is held and the applicant is successful on the merits of that application. As I did not hear that matter and nothing was decided for that application, I dismiss the landlord's application to recover the filing fee for that application without leave to reapply.

The landlord continues to hold the tenant's security and pet damage deposits. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's deposits in partial satisfaction of the monetary claim.

### **Conclusion**

I grant an Order of Possession to the landlord effective **two (2) days after service on the tenants**. Should the tenant or anyone 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.

I issue a \$11,200.00 Monetary Order in favour of the landlord under the following terms.

<b>Item</b>	<b>Amount</b>
Unpaid Rent, Parking Fees, NSF Charges	\$13,250.00
Less Security & Pet Damage Deposit	-2,150.00
Recovery of Filing Fee for this Application	100.00
<b>Total Monetary Order</b>	<b>\$11,200.00</b>

The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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.

The landlord's application to recover the filing fee for another 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: January 6, 2022

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**Residential Tenancy Branch**