



# Dispute Resolution Services

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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      OPC, MNRL-S FFL

### Introduction

This hearing dealt with a landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) to obtain an order of possession based on an undisputed 1 Month Notice to End Tenancy for Cause dated October 25, 2021 (1 Month Notice), for a monetary order for \$900.00 for unpaid rent or utilities, to offset any amount owing with the tenant's security deposit, and to recover the cost of the filing fee.

An agent for the landlord, LV (agent) and a witness for the landlord, AK (witness) appeared at the teleconference hearing. The witness was not required to present testimony. The agent was affirmed, and the hearing process was described. During the hearing the agent was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires. The agent was also provided an opportunity to ask questions.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated December 7, 2021 (Notice of Hearing), application and documentary evidence (Hearing Package) were considered. The agent testified that the Hearing Package was served on the tenant by registered mail at the rental unit address and that the tenant continues to occupy the rental unit. The landlord provided the registered mail tracking number, which I have included on the style of cause for ease of reference. According to the Canada Post online tracking website information, the Hearing Package was mailed on December 8, 2021, and was signed for and accepted by the tenant on December 15, 2021. As a result, I find the tenant was served as of December 15, 2021, which was the date they signed for the registered mail package.

Given the above, the hearing continued without the tenant present in accordance with Rule 7.1 and Rule 7.3 of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules), which address consequences for not attending a dispute resolution hearing.

### Preliminary and Procedural Matters

The agent testified that since filing their application, the tenant has failed to pay additional rent. As a result, the agent requested to amend the application to include rent now in arrears including March 2022, for a total of \$2,975.00 in total rent arrears. I find that this request to amend the application does not prejudice the respondent tenant as the tenant would be aware or ought to be aware that rent is due pursuant to the tenancy agreement. Therefore, I amend the application from \$900.00 to \$2,975.00 plus \$100.00 for the filing fee pursuant to section 64(3) of the Act.

The agent confirmed their email addresses during the hearing. They also confirmed that they are not aware of the tenant's email address. The agent was advised that the decision and any related orders will be emailed to the landlord. The decision will be sent by regular mail to the tenant.

### Issues to be Decided

- Is the landlord entitled to an order of possession based on an undisputed 1 Month Notice?
- Is the landlord entitled to a monetary order for unpaid rent or loss of rent under the Act?
- What should happen to the tenant's security deposit under the Act?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on December 1, 2020 and reverted to a month-to-month tenancy after May 31, 2021. Monthly rent is \$1,600.00 per month, plus \$25.00 for parking. Both are due on the first day of each month. The tenant paid a security deposit of \$800.00 at the start of the tenancy, which has accrued \$0.00 in interest and which the landlord continues to hold.

The agent confirmed service of the 1 Month Notice by placing it in the mailbox of the tenant on October 25, 2021, at the rental unit, which was witnessed by LU. A Proof of Service document supporting the agent's testimony was submitted in evidence. The 1

Month Notice included an effective vacancy date of November 30, 2021, and indicated two causes on page two of the 1 Month Notice, the first cause of which is repeated late payment of rent. The agent affirmed that the tenant did not dispute the 1 Month Notice and failed to vacate the rental unit by November 30, 2021, or any day since that date. The agent stated that the landlord is seeking an order of possession as the tenant continues to occupy the rental unit and that the landlord has suffered now a total loss of \$2,975.00 in unpaid rent, which includes March 2022 rent.

The agent testified that the tenant paid the following rent late as follows:

1. July 2021 rent due July 1, 2021, paid July 15, 2021.
2. August 2021 rent due August 1, 2021, paid August 10, 2021.
3. September 2021 rent due September 1, 2021, paid approximately September 20, 2021.
4. October 2021 rent due October 1, 2021, paid in November 2021.

### Analysis

Based on the undisputed documentary evidence of the landlord and undisputed testimony provided by the agent during the hearing, and on the balance of probabilities, I find the following.

**Order of possession** – Section 47 of the Act states that if the tenant once served with the 1 Month Notice does not dispute the 1 Month Notice within 10 days of receiving the 1 Month Notice, the tenant is conclusively presumed to have accepted the 1 Month Notice and must vacate the rental unit on the effective vacancy. In the matter before me, the tenant did not dispute the 1 Month Notice and as a result, I find the tenancy ended on the effective vacancy date, which was November 30, 2021.

As the tenant continues to occupy the rental unit, I find the tenant is overholding the rental unit. Therefore, pursuant to section 55 of the Act, I grant the landlord an order of possession effective **two (2) days** after service on the tenant. I have reviewed the 1 Month Notice and find that it complies with section 52 of the Act. I also note that the tenant was late paying rent over 3 times, and that 3 times is all that is required to find that the 1 Month Notice is valid. I find it is not necessary to consider the other cause listed on the 1 Month Notice as a result of the being satisfied with the first cause.

**Monetary order** – Section 26 of the Act applies and states that a tenant is responsible to pay the rent in accordance with the tenancy agreement on the date that it is due. In the matter before me, the \$1,600.00 monthly rent was due on the first day of each month. I find the tenant breached section 26 of the Act by failing to pay the rent as

claimed by the agent. Therefore, pursuant to section 67 of the Act, I find the landlord has met the burden of proof and that the tenant owes **\$2,975.00 in unpaid rent/loss of rent**, as claimed. I note that the tenant has not vacated the rental unit.

In addition, as the landlord's application was successful and pursuant to section 72 of the Act, I grant the landlord **\$100.00** for the recovery of the cost of the filing fee under the Act. Given the above, I find the landlord's total monetary claim is **\$3,075.00** comprised of unpaid rent/loss of rent and the filing fee as described above.

As the landlord continues to hold the tenant's security deposit of \$800.00, which has accrued no interest, I authorize the landlord to retain the tenant's entire \$800.00 security deposit in partial satisfaction of the landlord's monetary claim of \$3,075.00. I find the tenant continues to owe the balance to the landlord in the amount of **\$2,275.00**. Accordingly, I grant the landlord a monetary order pursuant to section 67 of the Act in that amount.

### Conclusion

The landlord's application is fully successful. The tenancy ended November 30, 2021. The tenant has been overholding the rental unit since that date.

The landlord is granted an order of possession effective two (2) days after service on the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlord has been authorized to retain the tenant's full security deposit of \$800.00 to offset the total amount of \$3,075.00 owing by the tenant to the landlord. I grant the landlord a monetary order pursuant to section 67 of the Act for the balance owing by the tenant to the landlord in the amount of \$2,275.00.

The decision and orders will be emailed to the landlord. The decision will be sent by regular mail to the tenant. The landlord must serve both orders on the tenant.

The tenant is reminded that they can be held liable for all costs related to enforcement of the monetary order and the order of possession.

Once the tenant has been served, the landlord may apply for enforcement of the monetary order at the Provincial Court (Small Claims). The landlord may also apply for

enforcement of the order of possession at the Supreme Court once the tenant has been served.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: March 23, 2022

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Residential Tenancy Branch