



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding METRO VANCOUVER HOUSING CORPORATION and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, OPC, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an Order of Possession for Cause, based on a One Month Notice to End Tenancy for Cause dated December 6, 2021; for a monetary order for unpaid rent of \$493.00; and to recover the \$100.00 cost of their Application filing fee.

Two agents for the Landlord, M.T. and J.P. ("Agents"), appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant. The teleconference phone line remained open for over 20 minutes and was monitored throughout this time. I confirmed that the teleconference codes provided to the Parties were correct, but the only persons to call into the hearing were the Agents, who indicated that they were ready to proceed.

I explained the hearing process to the Agents and gave them an opportunity to ask questions about it. During the hearing the Agents were given the opportunity to provide their evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Agents testified that they served the Tenant with the Notice of Hearing documents by Canada Post registered mail, sent on February 18, 2022. The Agents provided a Canada Post tracking number as evidence of service. The Canada Post tracking website indicated that the notice card for the registered mail package was available for

pickup; however, it indicates that the package was refused by recipient on March 31, 2022. The package was returned to the sender.

Based on the evidence before me on this matter, I find that the Tenant was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Agents in the absence of the Tenant.

Preliminary and Procedural Matters

The Agents provided the Landlord's email address in the Application and they confirmed this in the hearing. They provided an email address for the Tenant, but they were not sure if it was still active. As such, I advised the Agents that the Tenant would be mailed copy of the Decision to the rental unit, and it would be emailed to the Landlord. Any Orders would be sent to the appropriate Party in this manner.

At the outset of the hearing, I advised the Agents that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised them that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Landlord entitled to an order of possession?
- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Landlord submitted a copy of the tenancy agreement, and in the hearing, the Agents confirmed that the periodic tenancy began on November 1, 2017, with a monthly rent of \$758.00, which was subsidized by the Landlord. The tenancy agreement required the Tenant to pay her rent on the first day of each month. The Agents confirmed that the Tenant paid the Landlord a security deposit of \$605.00, and no pet damage deposit.

#1 Order of Possession for Late Payment of Rent

The Agents submitted a copy of the One Month Notice, and in the hearing they

confirmed that it was signed and dated December 6, 2021, it has the rental unit address, it was served by attaching a copy to the rental unit door on December 7, 2021, with an effective vacancy date of January 31, 2022, and it was served on the grounds that the Tenant is repeatedly late paying rent, and that the Tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. The Agents submitted a proof of service form for this One Month Notice.

I asked the Agents what material term the Tenant had breached, and they said that it was having repeatedly paid rent late, despite warnings about the consequences of continuing such behaviour.

The Agent , M.T., said:

She consistently pays rent late. It is due on the first of month, but [the Tenant] consistently pays late. We filed for arbitration in 2019, and an order of possession was granted; however, at that time the area manager gave her a second chance and set aside the order of possession in the promise that she would pay her rent on time. But since that time, rent has always been paid late.

We have given her letters about late payments. The dates that rent was paid late included August 21, 2020, September 24, 2020, February 10, 2021, June 16, 2021, and December 20, 2021, February 17, 2022, March 15, 2022, and April 6, 2022. We sent to the Tenant reminders that her rent should be paid on time, and that we were giving her an opportunity to rectify this. But when we sent a letter in December 2021, rent was still outstanding, and we sent the 30 Day notice.

#2 Monetary Order for Unpaid Rent → \$493.00

I asked the Agents the status of rent payment since then, and they provided the following information that I have put in this chart:

Date Rent Due	Amount Owning	Amount Paid	Date Received	Amount Owning
Dec 1/21	\$758.00	\$800.00	Dec 16/21	(\$42.00)
Jan 1/22	\$758.00	\$800.00	Jan 1/22	(\$84.00)
Feb 1/22	\$758.00	\$800.00	Feb. 17/22	(\$126.00)

Mar 1/22	\$758.00	\$1,200.00	March 15/22	(\$568.00)
Apr 1/22	\$758.00	\$400.00	April 6/22	(\$210.00)
May 1/22	\$758.00	\$0.00	n/a	\$548.00
TOTALS	\$4,548.00	\$4,000.00		\$548.00

The Agents submitted correspondence between the Parties that indicate the Landlord's concern about the late payments, and the consequences that the Tenant faces if she continues this behaviour. These emails and letters date back to February 2020, and end with a letter from the Landlord on January 7, 2022. This letter includes:

...

Our records show that [the Landlord] was granted an Order of Possession for unpaid rent back in 2019. [The Landlord] accepted a repayment agreement (attached) and did not exercise the Order of Possession as granted by the Residential Tenancy Branch on October 28, 2019.

Since you have continued to pay rent late regardless of the results of the last arbitration hearing, [the Landlord] will pursue to file an Application for dispute resolution for an Order of Possession. Please note, continued late rent is a breach of a material term of your signed tenancy agreement.

Please call me if you have any questions or concerns.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

#1 Order of Possession for Late Payment of Rent

Section 47 of the Act states:

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;

. . .

(h) the tenant

(i) has failed to comply with a material term, and

(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

Further, RTB Policy Guideline 8 (PG #8) states:

Material Terms

A material term is a term that **the parties both agree** is so important that the most trivial breach of that term gives the other party the right to end the agreement.

To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.

The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution proceeding, the Residential Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material.

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem. .

[emphasis added]

The Agents did not point me to a term in the tenancy agreement, which states that payment on time is a material term of the tenancy agreement, which *both Parties* agree is "...so important that the most trivial breach of that term gives the other party the right to end the agreement". If the Landlord wishes to consider something a "material term" in future tenancy agreements, I recommend using wording such as that set out in PG #8 above, and have the tenant initial their agreement to the materiality of the term.

However, consistently paying rent late is grounds to end a tenancy pursuant to section 47 of the Act, regardless of it being a material term or not. I find that the Agents have provided sufficient evidence to establish that the Tenant pays her rent late on a regular basis, despite the Landlord's discouragement of such behaviour. I also find that the One Month Notice is consistent with section 52 as to form and content.

Accordingly, and **pursuant to sections 47 and 55** of the Act, I award the Landlord with an **Order of Possession** for the rental unit based on the Tenant's ongoing failure to pay her rent on time. As the effective vacancy date of the One Month Notice has passed, this Order will be **effective two days after deemed service** to the Tenant.

#2 Monetary Order for Unpaid Rent → \$493.00

At the start of the hearing, the Agents advised me that the Tenant owes \$493.00 as of May 17, 2022, the date of the hearing. However, there is a discrepancy between this amount and the evidence of the Tenant's payment pattern provided later in the hearing, as set out in the chart above.

Further, evidence in the Landlord's documentary submissions indicates another different amount. Given these internal inconsistencies, I find I am unable to award a monetary order to the Landlord at this point. However, as I may have misinterpreted what the Agents told me in the hearing, I will dismiss this claim **with leave** to reapply, pursuant to section 62 of the Act.

Given the Landlord's success with the order of possession, I award the Landlord with their **\$100.00** Application filing fee from the Tenant, pursuant to section 72 of the Act. I authorize the Landlord to retain \$100.00 of the Tenant's \$605.00 security deposit in complete satisfaction of this award.

Conclusion

The Landlord is partially successful in their Application, as they provided sufficient evidence that the Tenant has been repeatedly late paying rent for the last two years, and has continued to do so, even after receiving an eviction notice. Accordingly, the Landlord is eligible for an order of possession for this rental unit. Given this success, the Landlord is awarded recovery of their **\$100.00** Application filing fee. The Landlord is authorized to retain \$100.00 of the Tenant's \$605.00 security deposit in complete satisfaction of this award.

However, the Landlord provided inconsistent evidence surrounding the amount of rent owed by the Tenant at the time of the hearing; therefore, I declined to award them with a monetary order in this regard. This claim is dismissed with leave to reapply; however, this Decision does not change any deadlines set out in the Act.

Pursuant to section 55 of the Act, I grant an **Order of Possession** to the Landlord effective **two days after service of this Order** on the Tenant. 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 Supreme Court of British Columbia and enforced as an Order of that Court.

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: May 18, 2022

Residential Tenancy Branch