



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PACIFICA HOUSING ADVISORY  
ASSOCIATION and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **OPQ, MNRL-S, FFL**

### **Introduction**

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

- an Order of Possession for ceasing to qualify for subsidized rent, pursuant to section 49.1;
- a Monetary Order for unpaid rent, pursuant to sections 26 and 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 9:40 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord's agents (M.L., and A.M.) attended the hearing and were 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 agents and I were the only ones who had called into this teleconference.

The agents were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The agents testified that they were not recording this dispute resolution hearing.

Per section 95(3) of the *Act*, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

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

#### Preliminary Issue- Service

Agent M.L. testified that the tenant was served with this application for dispute resolution via registered mail on April 22, 2022. A registered mail receipt stating same was entered into evidence. I find that the tenant was deemed served with the landlord's application for dispute resolution on April 27, 2022, five days after its registered mailing.

Agent M.L. testified that the tenant was served with the landlord's evidence via registered mail on July 13, 2022. A registered mail receipt stating same was entered into evidence. I find that the tenant was deemed served with the landlord's evidence on July 18, 2022, five days after its registered mailing.

#### Preliminary Issue- Amendment

Agent A.M. testified that the amount of outstanding rent/ damages for overholding the subject rental property has increased since this application for dispute resolution was filed. Agent A.M. testified that the landlord is seeking to amend the application to collect all outstanding rent and damages for overholding up to the current date.

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.

I find that in this case the fact that the landlord is seeking compensation for all outstanding rent/ damages for overholding, 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/ damages for overholding.

### Issues to be Decided

1. Is the landlord entitled to an Order of Possession for ceasing to qualify for subsidized rent, pursuant to section 49.1 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 retain the tenant's security deposit, pursuant to section 38 of the *Act*?
4. 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 agents, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the agents' claims, and my findings are set out below.

Agent M.L. testified that this tenancy began on January 1, 2019 and the tenant is currently occupying the subject rental property. Agent M.L. testified that a security deposit of \$365.50 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.

Agent M.L. testified that the landlord has an operating agreement with B.C. Housing which provided the landlord with a subsidy on behalf of the tenant when specified income documents were provided by the tenant.

Agent M.L. referred to sections 38 and 39 of the Residential Tenancy Agreement Addendum which state:

38. DECLARATION OF INCOME AND FAMILY COMPOSITION The tenant agrees from time to time as required by the Landlord, on a form provided by the Landlord, to declare the number of Tenants and / or Occupants and / or Dependents in the rental unit and their names, ages, gross income and assets. Proof of income and assets must be provided with the declaration. The declaration and information provided with the declaration will be part of this agreement and the information will be material to this agreement. Any misrepresentation by omission will be cause for termination of the tenancy. Failures by the Tenant to make a declaration as required by the Landlord and / or provide information or documentation requested by the Landlord will be cause for termination of this agreement. The tenant consents to the Landlord and the Commission verifying personal information, as defined in the Freedom of Information Act and Protection of Privacy Act, which consent is required by the Act to enable the Landlord and the Commission to carry out its audit function.

39. RENT SUBSIDIES The declaration and information (Application for Rent Subsidy) provided by the Tenant, will be given to the Commission. The Commission will determine if any rent subsidy is payable to the Landlord for the Rental unit.

Agent M.L. testified that the tenant did not submit all of the required documents set out in section 38 of the Addendum. Agent M.L. testified that the tenant was sent three letters requesting the required documents, but the tenant did not comply. The three letters sent to the tenant were entered into evidence. Agent M.L. testified that because the tenant did not submit the required documents, the tenant ceased to qualify for subsidy and ceased to qualify for the subsidized rental unit effective February 1, 2022.

Agent A.M. testified that up until January 2022, the tenant qualified for a \$384.00 monthly subsidy and that the Ministry direct paid the landlord the remaining \$472.00 monthly payment, all of which were due on the first day of each month. The total of the subsidy plus the Ministry payment equalled \$856.00.

The agent testified that from February 1, 2022 to the current date, the tenant, via the Ministry, paid \$472.00 per month (the subsidized amount) instead of the full unsubsidized amount of \$856.00. The agent testified that the landlord is seeking the tenant to pay the additional unsubsidized portion of rent in the amount of \$384.00 per month. The landlord entered into evidence a ledger stating same.

Agent M.L. testified that on January 5, 2022 the tenant was served with a Two Month Notice to End Tenancy Because the Tenant Does not Qualify for Subsidized Rent Unit (the “Two Month Notice”) via registered mail. A registered mail receipt for same was entered into evidence. The Two Month Notice was entered into evidence. The Two Month Notice is signed and dated by the landlord, gives the address of the subject rental property, states the ground for ending the tenancy, and is in the approved form, RTB Form #32.

The Two Month Notice states that the tenant must vacate the subject rental property by March 31, 2022. The tenant did not file an application with the Residential Tenancy Branch to cancel the Two Month Notice.

### Analysis

Based on agent M.L.’s undisputed testimony and the registered mail receipt entered into evidence, I find that the tenant was deemed served with the Two Month Notice on January 10, 2022, five days after its mailing, pursuant to sections 88 and 90 of the *Act*.

Upon review of the Two Month Notice I find that it meets the form and content requirements of section 52 of the *Act* because it:

- is signed and dated by the landlord,
- gives the address of the subject rental property,
- states the ground for ending the tenancy, and
- is in the approved form, RTB Form #32.

Section 49.1 of the *Act* states:

- (6) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (5), the tenant
  - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
  - (b) must vacate the rental unit by that date.

The tenant did not file an application for Dispute Resolution seeking an Order to cancel the Two Month Notice. Pursuant to section 49.1(6) of the *Act*, I find that the tenant is

conclusively presumed to have accepted the end of the tenancy on the effective date of the Two Month Notice, that being March 31, 2022. Pursuant to section 55 of the *Act*, I award the landlord a two-day Order of Possession.

Based on the undisputed testimony of the agents and the tenancy agreement, I find that the tenant ceased to qualify for the subsidy and the subsidized unit on February 1, 2022 and full unsubsidized rent/ damages for overholding in the amount of \$856.00 were due on the first day of each month from February 2022 to July 2022 and pro-rated damages for overholding were due from August 1-8, 2022.

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 \$856.00 on the first day of each month from February to March 2022, which the tenant failed to do. Based on the testimony of the agent and the ledger entered into evidence I find that the tenant only paid \$472.00 per month and owes the landlords **\$768.00** in unpaid rent from February to March 2022.

Residential Tenancy Policy Guideline #3 states:

If a tenant continues to occupy the rental unit or manufactured home site after the tenancy has ended (overholds), then the tenant will be liable to pay compensation for the period that they overhold pursuant to section 57(3) of the RTA (section 50(3) of the MHPTA). This includes compensation for the use and occupancy of the unit or site on a per diem basis until the landlord recovers possession of the premises.

As this tenancy ended on March 31, 2022 and the tenant has not yet moved out, I find that the tenant has overheld the subject rental property from April 1, 2022 to the present date. Pursuant to section 57(3) of the *Act* I find that the tenant is required to compensate the landlord for use and occupancy of the subject rental property pursuant to the following calculation:

4 (months from April 2022- July 2022) \* \$856.00 (monthly damages for overholding) = \$3,424.00 (damage for overholding from April 2022 to July 2022)

August 1, 2022- August 8, 2022: \$856.00 (monthly damages for overholding) / 31 (days in August) = \$27.61 (daily rate) \* 8 (days tenant overheld thus far in August 2022) = \$220.88 (pro-rated damage for overholding from August 1-8, 2022)

Damages for overholding April 1, 2022 to August 8, 2022: \$3,424.00 + \$220.88 = \$3,644.88

\$3,644.88 (total damages) - \$2,360.00 (Ministry payments of \$472.00 per month from April to August 2022 (\$472.00 \* 5)) = **\$1,284.88 (damages owed by tenant for overholding from April 1, 2022 to August 8, 2022)**

If the tenant overholds the subject rental property past August 8, 2022, the landlord is at liberty to file another claim for damages for overholding.

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

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 \$365.50.

### Conclusion

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.

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

Item	Amount
Unpaid rent	\$768.00
Damages for overholding	\$1,284.88
Filing Fee	\$100.00
Less security deposit	-\$365.5
<b>TOTAL</b>	<b>\$1,787.38</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.

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: August 08, 2022

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Residential Tenancy Branch