



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 0775462 B.C. LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPN 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 the tenant given written notice to end the tenancy, for a monetary order for unpaid rent or utilities, to retain all or part of the tenant's security deposit towards any amount owing, and to recover the cost of the filing fee.

An agent for the landlord, DH (agent) and two co-owners of the named landlord company, PP and SMH (landlords) appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlords and agent were 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.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated July 21, 2022 (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 on July 23, 2022. The registered mail tracking number has been included on the cover page of this decision for ease of reference. According to the Canada Post registered mail tracking website (Website), the Hearing Package was signed for and accepted on August 8, 2022. The Website also indicated the following:

A name and signature have been captured for the item, but the signatory has requested that they not be displayed on our website. If you need a copy of the name and signature, please call us at 1-888-550-6333. A fee may apply.

Based on the undisputed evidence before me and the confirmation of the registered mail being signed for and accepted, I accept that the tenant was sufficiently served as of August 8, 2022, the date the Hearing Package was signed for and accepted. I further find that this matter was undisputed by the tenant as the tenant did not attend the hearing. The hearing continued without the tenant present pursuant to Rule 7.3 of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules).

### Preliminary and Procedural Matters

The agent testified that since filing their application, the tenant now owes a total amount of \$6,140 in rent arrears, which will be described in detail later in this decision. The landlords requested to have the additional rent arrears added to the claim and 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 \$2,160 to \$6140, pursuant to section 64(3)(c) of the Act.

The agent confirmed their email address at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them. As there was no email address for the tenant, the decision will be sent by regular mail to the tenant. The agent and landlords confirmed that they believe the tenant may still be occupying the rental unit as no keys have been returned and the tenant has not advised that they have vacated the rental unit.

### Issues to be Decided

- Is the landlord entitled to an order of possession based on the tenant's written notice to end tenancy?
- 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 month-to-month tenancy agreement began on December 1, 2015. Monthly rent was \$750 per month but by December 6, 2021, which was the date the landlord purchased the rental property, the landlords stated the rent had been increased to \$820 by the previous landlord. The

tenant paid a security deposit of \$375 at the start of the tenancy, which has accrued \$0.00 in interest. The landlord continues to hold the tenant's security deposit.

The landlord presented the tenant's written notice to end their tenancy, which lists the date they will be vacating as July 31, 2022, and also includes the tenant's name, their signature, the rental unit address, and is dated April 9, 2022 (Tenant's Notice).

The landlord confirmed the following unpaid rent or loss of rent:

| <b>MONTH and AMOUNT OF RENT</b> | <b>AMOUNT OWING</b> |
|---------------------------------|---------------------|
| May 2022 of \$820               | \$400               |
| June 2022 of \$820              | \$820               |
| July 2022 of \$820              | \$820               |
| August 2022 of \$820            | \$820               |
| September 2022 of \$820         | \$820               |
| October 2022 of \$820           | \$820               |
| November 2022 of \$820          | \$820               |
| December 2022 of \$820          | \$820               |
| <b>TOTAL</b>                    | <b>\$6,140</b>      |

The landlord is seeking to retain the tenant's security deposit from the amount owing and the \$100 filing fee for this application.

### Analysis

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

**Order of possession** – Section 45(1) of the Act applies and states:

#### **Tenant's notice**

45(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 52 of the Act also applies and states:

**Form and content of notice to end tenancy**

- 52 In order to be effective, a notice to end a tenancy 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,
    - (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
  - (e) when given by a landlord, be in the approved form.

In the matter before me, the Tenant's Notice to the landlord to end their tenancy as of July 31, 2022, I find complies with section 52 of the Act. As a result of the Tenant's Notice I find the tenancy legally ended on **July 31, 2022**. As the landlords are unsure if the tenant has vacated and that due to the rental unit keys not being returned, I grant the landlord an **Order of Possession effective two (2) days after service on the tenant**. I find the landlord has met the burden of proof.

**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, I find the tenant breached section 26 of the Act by failing to pay the rent as claimed by the landlord in the total amount of **\$6,140**.

As the landlord's claim has merit, I also granted the filing fee of **\$100**, which I find brings the total claim to **\$6,240**. I find the landlord has met the burden of proof and that the tenant owes **\$6,240** which includes the filing fee, due to the tenant breaching section 26 of the Act.

As the landlord continues to hold the tenant's security deposit of \$375, which has accrued no interest, I authorize the landlord to retain the tenant's entire \$375 security deposit in partial satisfaction of the landlord's monetary claim of \$6,240. I find the tenant owes the balance to the landlord in the amount of \$5,865. Accordingly, I grant the landlord a monetary order pursuant to section 67 of the Act in the amount of **\$5,865**.

Conclusion

The landlord's application is fully successful.

The tenancy ended on July 31, 2022.

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 \$375 to offset the total amount of \$6,240 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 \$5,865.

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 the orders on the tenant. The tenant is reminded that they may be held liable for all enforcement costs including but not limited to court fees and bailiff costs.

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: December 1, 2022

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Residential Tenancy Branch