



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MT, CNC, FF

### Introduction

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

- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 66;
- cancellation of the landlord's 1 Month Notice pursuant to section 47; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The landlord's apartment manager (the landlord) testified that he served the 1 Month Notice by posting it on the tenant's door at 4:45 p.m. on October 28, 2011. Although the landlord had a witness available who the landlord said was willing to testify that he saw him post the 1 Month Notice on the tenant's door, the tenant's agent did not dispute that the 1 Month Notice was posted on the tenant's door on October 28, 2011. The tenant testified that he received the 1 Month Notice early in November 2011. In accordance with section 90 of the *Act*, I am satisfied that the tenant was served with this Notice on October 31, 2011, three days after it was posted on his door.

The landlord confirmed that the tenant's agent, the tenant's spouse, handed the landlord a copy of the dispute resolution hearing package at 1:30 p.m. on November 30, 2011. I am satisfied that the tenant served this package to the landlord.

At the hearing, the landlord made an oral request for a monetary award for three months of unpaid rent and for an Order of Possession if the tenant's application for dispute resolution were dismissed. I advised the landlord that I could only consider the landlord's oral request for an Order of Possession. I informed the landlord that I could not consider an oral request for a monetary award and that he would have to make a separate written application for a monetary award.

In considering the tenant's application, I am satisfied that the tenant as named by himself in his application for dispute resolution and on the Residential Tenancy Agreement is the same tenant as was identified as MM in the landlord's 1 Month Notice.

Issues(s) to be Decided

Should the tenant's application for more time to dispute the 1 Month Notice be allowed? Should the tenant's application to cancel the 1 Month Notice be allowed? If not, is the landlord entitled to an Order of Possession? Is the tenant entitled to recover his filing fee for this application from the landlord?

Background and Evidence

This periodic tenancy commenced on September 3, 2008. Monthly rent is currently set at \$580.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$290.00 security deposit paid when the tenant moved into this rental unit.

The landlord entered into written evidence a copy of his 1Month Notice requiring the tenant to end this tenancy by November 30, 2011. In that Notice, the landlord cited the following reasons for the issuance of the Notice:

*Tenant is repeatedly late paying rent.*

*Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

The landlord sent the 1 Month Notice as a result of the tenant's continuing pattern of late payment of his rent. The landlord provided copies of two 10 Day Notices to End Tenancy for Unpaid Rent sent to the tenant. The landlord also entered into written evidence copies of letters dated January 6, 2010, March 2, 2010, May 3, 2010, and October 3, 2011, each citing the tenant's lateness in paying rent. These letters advised the tenant that he had been late paying rent in November 2009, December 2009, January 2010, March 2010, May 2010 and October 2011. The letters noted that "any further late rent payment will result in a one (1) month Notice to End a Residential Tenancy pursuant to Section 36(1)(h) of the *Act (RSBC 1996) Chapter 406.*"

Analysis

The landlord's 1 Month Notice issued on October 28, 2011 was deemed served on October 31, 2011. Although the tenant said that he received the 1 Month Notice early in November, he did not file his application for dispute resolution until November 28, 2011, well beyond the 10 day time limit for filing an application to dispute that Notice.

I have considered the explanations provided by the tenant and the tenant's agent for the tenant's failure to apply for dispute resolution within 10 days of his receiving the landlord's 1 Month Notice. The tenant's agent said that English is the tenant's first language and he did not properly understand the content of the 1 Month Notice. He had to obtain help from others to translate this information for him and to understand what he had to do to dispute the landlord's 1 Month Notice. Although I can appreciate that the tenant encountered difficulties understanding the 1 Month Notice, it does not appear that he took adequate measures to attend to the landlord's 1 Month Notice which clearly called for an end to this tenancy by November 30, 2011. He did not obtain information to dispute this matter until two days before the 1 Month Notice was to take effect. Other than his testimony that he took the Notice to a friend who used to work with him to seek his advice, he provided no other testimony to justify taking 28 days to apply for dispute resolution. For these reasons, I dismiss the tenant's application for an extension of time to submit his application for dispute resolution regarding the 1 Month Notice.

I find that the tenant has not made application pursuant to section 47(4) of the *Act* within ten days of receiving the 1 Month Notice. In accordance with section 47(5) of the *Act*, the tenant's failure to take this action within ten days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by November 30, 2011.

In consideration of the landlord's oral request for an Order of Possession, I have also reviewed the landlord's 1 Month Notice to ensure that the landlord had adequate grounds to issue that Notice. Residential Tenancy Policy Guideline #38 provides the following guidance regarding the circumstances whereby a landlord may end a tenancy where the tenant is repeatedly late paying rent.

*Three late payments are the minimum number sufficient to justify a notice under these provisions...*

At the hearing, the tenant's agent and the tenant maintained that because the tenant commenced his tenancy on the third day of September, 2008, his rent was not due until the third of each month. The landlord noted that Section 6 of the Residential Tenancy Agreement with this tenant reads in part as follows:

*RENT:           The tenant shall pay the rent to the landlord on or before the first day of each month.*

I find that this evidence clearly requires the tenant to pay all of the rent by the first of each month. The evidence presented indicated that the tenant has been late in paying his rent on at least three occasions dating back as far as November 2009. As outlined above, the tenant received repeated warnings about his late payment of rent and continued his pattern of late rent payments. Based on the undisputed evidence of the landlord, the tenant has not paid any rent for October, November or December 2011. The tenant and his agent explained that the tenant is out of work but is hopeful that he will be able to pay the outstanding rent once he starts working again. Based on the oral and written evidence, I find that the tenant has been repeatedly late in paying rent. As such, I find that the landlord had reason to issue the 1 Month Notice for late payment of rent.

In coming to this finding, I note that the landlord was incorrect in citing section 36(1)(h) of the *Act* as his justification for ending this tenancy for an alleged breach of the *Act*. The landlord would appear to have used old forms for these letters as there is no section 36(1)(h) in the current *Act*. Although this error would not have allowed the landlord to obtain an end to this tenancy and an Order of Possession for breach of a material term of the tenancy agreement, there is ample evidence of the tenant's late payment of rent to justify the other portion of the landlord's 1 Month Notice.

I dismiss the tenant's application to cancel the landlord's 1 Month Notice because the tenant failed to apply for dispute resolution within the 10 day time period for doing so and failed to demonstrate that the landlord was in error in claiming that there was a repeated pattern of late rent payments during this tenancy.

Section 55(1) of the *Act* reads as follows:

**55** (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

*(a) the landlord makes an oral request for an order of possession, and*

*(b) the director dismisses the tenant's application or upholds the landlord's notice.*

As the tenant's application to cancel the 1 Month Notice is dismissed and the effective date for the end of this tenancy has now passed, I allow the landlord's oral request for an Order of Possession. The landlord will be given a formal Order of Possession which

must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Since the tenant was unsuccessful in his application for dispute resolution, he is responsible for his own filing fee for his application.

### Conclusion

I dismiss the tenant's application for more time to dispute the landlord's 1 Month Notice and the tenant's application to cancel the landlord's 1 Month Notice without leave to reapply. At the hearing, the landlord requested an Order of Possession if the tenant's application for cancellation of the 1 Month Notice were dismissed. I provide the landlord with a formal copy of an Order of Possession to take effect within 2 days of the landlord's service of this notice to the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I dismiss the tenant's application for recovery of his filing fee from the landlord 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: December 14, 2011

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Residential Tenancy Branch