



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the Act) for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

The landlord's agent attended the hearing and confirmed that she had full authority to act on behalf of the landlord. Both tenants attended the hearing. Each party in attendance was given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

At the hearing, the agent, on behalf of the landlord, made an oral request for an order of possession in the event that I find that the 1 Month Notice was validly issued.

The agent appeared and did not contest service of the tenants' dispute resolution package.

The agent testified that she served the tenants with the landlord's evidence by registered mail on 3 July 2015. The agent provided me with tracking numbers that showed the same. The tenants both had examined the landlord's evidence and the tenant DM confirmed that she had retrieved her registered mailing. On the basis of this evidence, I find that the tenants were deemed served with the landlord's evidence pursuant to sections 88 and 90 of the Act.

The agent testified that she served the tenants with the 1 Month Notice on 27 May 2015 by posting that notice to the tenants' door. The tenants did not contest service. On the basis of this evidence, I am satisfied that the tenants were deemed served with the 1 Month Notice pursuant to sections 88 and 90 of the Act.

### Preliminary Issue – Late Attendance by Tenant DM

At the commencement of the hearing the tenant DM was not in attendance. The tenant EC stated that she was not acting as the tenant DM's agent and indicated that DM intended to appear.

Rule 10.1 of the *Residential Tenancy Branch Rules of Procedure* (the Rules) provides that:

**10.1 Commencement of the hearing** The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party ...

The hearing was delayed for approximately five minutes to wait for the tenant DM. When the tenant DM did not join within that time period the hearing commenced in her absence.

The tenant DM joined the teleconference hearing approximately thirty minutes after it commenced. When the tenant DM joined the hearing, I updated her on the progress of the hearing. The tenant DM was informed of the procedure. The tenant DM was able to participate in the agent's cross examination.

### Preliminary Issue – Tenants' Request to Cancel the Proceedings

At the hearing the tenant EC asked to amend the application to withdraw the tenants' claim.

Paragraph 64(3)(c) allows me to amend an application for dispute resolution. In determining whether or not to allow an amendment, I must consider the prejudice to the responding party.

Pursuant to subsection 55(1) of the Act, a landlord may make an oral request for an order of possession at a tenant's application to dispute a notice to end tenancy. The landlord made an oral request for an order of possession at the hearing. As the landlord has made an oral request for an order of possession pursuant to subsection 55(1) of the Act, it would unduly prejudice the landlord to allow the tenants to amend their application to withdraw their claim.

As the landlord would be unduly prejudiced, I denied the tenant's request to withdraw the tenants' claim. I informed the tenant EC of this decision at the hearing.

### Preliminary Issue – Tenants' Objection to Procedure

At the beginning of the hearing, the tenant EC set out several complaints in respect of the Residential Tenancy Branch's procedure. In particular, the tenant EC raised concerns with the fact that the proceedings were not recorded, the landlord's evidence was not notarized, and the hearing was conducted by way of teleconference.

The tenant EC asked for permission to record the proceedings. Rule 9.1 of the Rules expressly prohibits the private recording of dispute resolution proceedings. I instructed the tenant that she should not privately record proceedings. Should the tenant wish to have an official recording of dispute resolution proceedings, she could have done so in accordance with the official recording rules set out in rule 9.2 of the Rules.

The tenant EC took issue with the fact that the landlord's evidence was not notarized. There is no requirement in the Act, regulations, or Rules to submit notarized copies of documents. Furthermore, pursuant to section 75 of the Act, an arbitrator may admit as evidence, whether or not it would be admissible under the laws of evidence, any oral or written testimony or any record or thing that the director considers to be necessary and appropriate, and relevant to the dispute resolution proceeding. In this case, the landlord's documentary evidence is necessary, appropriate and relevant, as such whether or not it is notarized, I will consider it.

The tenant EC believed that it was necessary to have the agent in front of her in person to put documents to her. Pursuant to paragraph 74(2)(c), a hearing may be conducted by telephone. With the exception of medical necessity, it is the practice of this Branch to hold hearings by teleconference. I informed the tenant EC at the hearing that I had heard all of her objections, but the hearing would proceed as scheduled by teleconference with or without the tenants' participation.

### Preliminary Issue – Tenants' Right to Cross Examine

The tenants made use of their right to cross examine the agent on her evidence. The tenants spent approximately fifteen minutes cross examining the agent. It was apparent that some of their questions were not relevant or had been asked repeatedly and already answered. In particular, the tenants repeatedly asked questions about the title of the ledger and repeatedly asked questions about the absence of three payments made in December (the security deposit, pet damage deposit, and partial rent payment for that month).

The Rules set out that evidence at a hearing must be relevant:

**3.6 Evidence must be relevant**

All evidence must be relevant to the claim(s) being made in the Application(s) for Dispute Resolution.

The Arbitrator has the discretion to decide whether evidence is or is not relevant to the issues identified on the application and may decline to hear evidence that they determine is not relevant.

“Relevant” is defined in the Rules:

**Relevant** evidence is relevant if it relates to or bears upon the matter at hand, or tends to prove or disprove an alleged fact. Argument is relevant if it relates to or bears upon the matter at hand.

After approximately fifteen minutes of cross examination, the tenants were no longer asking questions that put any new relevant evidence before me. I asked the tenants to move on to providing their direct evidence and ordered that their cross examination was complete.

Preliminary Issue – Tenants’ Evidence

The tenant DM submitted that she wanted to submit her bank statements as evidence but was unable to do so because of the death of her uncle.

I did not make an order for evidence to be received after this hearing. The tenants had over two months to provide their evidence in advance of this hearing. To make such an order would unduly prejudice the landlord and result in delay of a decision on the merits. Further, as will be seen in the reasons that follow, the tenant DM’s bank statements would have little effect on the outcome of this matter.

Issue(s) to be Decided

Should the landlord’s 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

## Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenants' claim and my findings around it are set out below.

The tenants began occupying the rental unit at some point in December 2013. The parties entered into a tenancy agreement dated 9 December 2013 for a tenancy beginning 1 January 2014. I was provided a copy of the tenancy agreement. The tenancy agreement lists both tenants on the same agreement. Monthly market rent is \$1,465.00. The landlord holds both pet damage and security deposits totalling \$1,450.00.

Clause 5(c) of the tenancy agreement reads:

... The rent is due on the first day of the month during the length of the tenancy.

Clause 6(a) of the tenancy agreement sets out:

The tenant must pay the rent on time...

On 2 April 2014, the agent wrote to the tenants documenting late payments of rent for January February and April:

Your tenancy agreement stipulates that rent must be paid in advance, no later than the first day of the month. In recent months the consistent pattern of late payment that has developed for your account is unacceptable.

Continued late payment of rent is a breach of your tenancy agreement and if this pattern continues may result in a 'One Month Notice to End Tenancy' for consistent late payment of rent.

Please keep you recount up to date, and ensure that your rent is received on or before the first day of the month from this point forward.

On 15 December 2014 the agent wrote to the tenants documenting six late payments of rent. In particular the letter sets out:

Your tenancy agreement stipulates that rent must be paid in advance, no later than the first day of the month. In recent months the consistent pattern of late payment that has developed for your account is unacceptable and is considered a breach of your signed Tenancy Agreement.

[The landlord] is not in a position to authorize any further late payments of rent and we cannot approve your proposal for January 2015 rental payments. Please be advised that in the future if [the landlord] receives any late payments a 'One Month Notice to End Tenancy' of consistent late payment of rent will be issued.

On 27 May 2015 the landlord issued the 1 Month Notice. The 1 Month Notice set out an effective date of 30 June 2015. The 1 Month Notice set out that it was issued as the tenants were repeatedly late paying rent and the tenants had breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

I was provided with a letter dated 26 June 2015. That letter sets out that the tenants' payment was received for the tenants' use and occupancy only of the rental unit.

The agent testified that she or staff members checks the drop box in the residential property. The agent testified that the only days that the drop box is not checked are the weekends and statutory holidays. The agent testified that she checks the drop box before the end of the month and daily after the first for one week. The agent testified that it is her practice that as soon as she collects the cheque from the drop box she takes it back to the office and the cheques are entered into the computer that day. The date is set by the computer as the date of entry. The agent testified that if the first of the month falls on a weekend or holiday as long as a tenant appears to pay his or her rent at the head office within the first hour of the next business day, the rent payment will be accepted as on time.

The tenant EC admitted the tenants have paid their rent late three or four times. The tenant EC testified that when the tenants would pay their rent late they would let the landlord know. In particular, the tenant EC testified that the tenants' subsidy arrives after the first and that they cannot pay their rent until the subsidy arrives. The tenant testified that May's late payment was a mistake. The tenant EC testified that she did not realise that she had not put her payment in the drop box. The tenant EC testified that if the landlord was in the practice of issuing her receipts she would have realised her mistake.

The tenant EC alleges that some of the dates recorded on the ledger are false. The tenant EC testified that she would drop off payments on time in the residential property drop box. The tenant EC submits that she did not agree to go to the landlord's head office to pay her rent. The tenant EC submits that there is nothing in the tenancy agreement that sets out the method by which the tenants' rent must be paid.

The landlord provided me with a tenant ledger for the rental unit. Although the ledger only lists the tenant EC at the top of the page, I accept the agent's testimony that this ledger is in respect of the rent payments received from the tenants since 1 January 2014 and is thus for both tenants. The landlord testified that the ledger is accurate. The ledger documents the following payment schedule:

<b>Rent Due (day of week; holiday)</b>	<b>Next Business Day</b>	<b>Rent Paid By</b>	<b>Late</b>
1 January 2014 (W; H)	2 January 2014	6 January 2014	L 5d
1 February 2014 (Sa)	3 February 2014	11 February 2014	L 10d
1 March 2014 (Sa)	3 March 2014	1 March 2014	
1 April 2014 (Tu)	-	3 April 2014	L 2d
1 May 2014 (Th)	-	1 May 2014	
1 June 2014 (Su)	2 June 2014	1 June 2014	
1 July 2014 (Th; H)	2 July 2014	1 July 2014	
1 August 2014 (F)	-	15 August 2014	L 14d
1 September 2014 (Sa; H)	2 September 2014	1 September 2014	
1 October 2014 (W)	-	3 October 2014	L 2d
1 November 2014 (Sa)	3 November 2014	1 November 2014	
1 December 2014 (M)	-	3 December 2014	L 2d
1 January 2015 (Th; H)	2 January 2015	1 January 2015	
1 February 2015 (Su)	2 February 2015	1 February 2015	
1 March 2015 (Su)	2 March 2015	1 March 2015	
1 April 2015 (W)	-	1 April 2015	
1 May 2015 (F)	-	13 May 2015	L 13d

The tenant EC testified that her portion of the rent is paid directly by the Province. The tenant EC submits that she is a separate tenant.

### Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

Paragraph 47(1)(b) of the Act permits a landlord to terminate a tenancy by issuing a 1 Month Notice in cases where a tenant has been repeatedly late paying rent. *Residential Tenancy Policy Guideline*, "38. Repeated Late Payment of Rent" provides that a minimum of three late payments constitutes cause pursuant to paragraph 47(1)(b). In exceptional circumstances the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.

Pursuant to section 26 of the Act, the tenants have the obligation to pay their rent when it is due under the tenancy agreement. The tenancy agreement sets out that rent is due on the first. The landlord asserted its rights to receive rent on time by issuing letters dated 2 April 2014 and 15 December 2014 that demanded that the tenants pay their rent on time.

The agent has provided evidence that for the period January 2014 to May 2015 (eighteen months), rent was paid late seven times. On four occasions rent was not paid in full until on or after the sixth of the month.

I accept the agent's testimony with respect to the landlord's practice in collecting cheques from the drop box and registering rent payments in the ledger. I reject the tenants' arguments that the business record contains errors. I find, on a balance of probabilities, that the tenants paid their rent late on seven occasions. I find that this pattern of late payments constitutes "repeatedly late" within the meaning of paragraph 47(2)(b).

The tenants have testified that they were late paying rent because they did not agree to go to the landlord's head office, received their subsidy after the first of the month or made a mistake. These are not sufficient reasons for paying rent late. They are not exceptional circumstances.

The tenants have not provided any evidence that would indicate that the landlord has waived the right to enforce the 1 Month Notice. The landlord provided evidence that a receipt for a payment for July was received on the basis of the tenants' use and occupancy only. This indicates that the tenancy has not been reinstated.

*Residential Tenancy Policy Guideline*, "13. Rights and Responsibilities of Co-tenants" discusses the rights and obligations of tenants, cotenants, and occupants:

A tenant is the person who has signed a tenancy agreement to rent residential premises. ... Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement.

Both tenants signed the same tenancy agreement. The tenants have not provided any evidence that would defeat the presumption of joint tenancy. Accordingly, the tenants are jointly and severally responsible for the payment of rent under the tenancy agreement, which means that it does not matter if one co-tenant pays half of rent on time if the other co-tenant pays late.



I find that the 1 Month Notice issued on the basis of repeatedly late rent payments is valid. As such I dismiss the tenants' application to cancel the 1 Month Notice without leave to reapply.

As the tenants have not been successful in their application, they are not entitled to recover their filing fee from the landlord.

### Conclusion

The landlord is provided with a formal copy of an order of possession effective one o'clock in the afternoon on 31 July 2015. 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.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: July 23, 2015

---

Residential Tenancy Branch

