



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, CNR, RR

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenants on June 8, 2016 to dispute a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”), and to reduce rent for repairs, services or facilities agreed upon but not provided. The Tenant amended the Application on June 24, 2016 to dispute a 1 Month Notice to End Tenancy for Cause (the “1 Month Notice”).

The Tenants, the Landlord, and the Co-Landlord appeared for the hearing. However, only the female Tenant and the Co-Landlord provided affirmed testimony during the hearing. The Co-Landlord confirmed receipt of the Tenants’ Application to dispute the 10 Day Notice. However, the Co-Landlord denied receipt of the Tenants’ amended Application to dispute the 1 Month Notice.

The Tenant explained that she had made the amended Application and faxed this to the Residential Tenancy Branch office but had not provided the Landlord a copy as she was not aware that she had to do this. The instruction document that accompanies the “Amendment to an Application for Dispute Resolution” form clearly requires the applicant to serve the respondent with a copy so that they can be put on notice of the claim being made against them. The Co-Landlord stated that they were aware that the Tenant had disputed the 1 Month Notice and were prepared to provide oral evidence to prove the Notice. The Co-Landlord confirmed that they had not provided any documentary evidence prior to the hearing.

As a result, pursuant to Rule 4.3 of the *Residential Tenancy Branch Rules of Procedure* (the “Rules”) and my authority under Section 64(3) (c) of the *Residential Tenancy Act* (the “Act”), I allowed the amendment to the Tenants’ Application to dispute the 1 Month Notice. The hearing process was explained and the participants had no questions or issues with the proceeding instructions. Both parties were provided the opportunity to

present evidence on the matters before me and to cross-examine the other party and make submissions to me.

### Preliminary Issues

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure states that an Arbitrator may use their discretion to dismiss unrelated claims with or without leave to re-apply. At the start of the hearing, I determined that the Tenants' request was to cancel two notices to end the tenancy. The Tenants also seek monetary relief for the alleged failure of the Landlord to complete repairs to the rental unit. Accordingly, I determined that the notices to end tenancy were unrelated to the Tenants' request for a rent reduction. Therefore, I severed the issues and decided to only deal with the notices to end tenancy in this hearing. The Tenants' request for a rent reduction was dismissed with leave to re-apply.

At the start of the hearing, the Co-Landlord confirmed that the Tenants had paid the outstanding rent for June 2016 for which the Tenants had been served the 10 Day Notice. The parties confirmed that the 10 Day Notice was of no effect and was withdrawn. As a result, I turned my mind to the 1 Month Notice which was the notice the Co-Landlord wanted to use to end the tenancy.

While I have considered the parties' evidence relating only to the issue to the decided below, I have only documented that evidence which I relied upon to make findings in this decision.

### Issues(s) to be Decided

Should the one month notice to end tenancy be cancelled?

### Background and Evidence

The parties agreed that this tenancy started on October 1, 2015 on a month to month basis. A written tenancy agreement was signed by the parties which required the Tenants to pay rent in the amount of \$650.00 on the first day of each month. The Tenants paid a security deposit of \$325.00 on March 4, 2016 which the Landlord still retains.

The Tenant confirmed receipt of the 1 Month Notice dated June 23, 2016 on the same day it was posted to their door. The Notice was provided into evidence and shows a vacancy date of July 31, 2016. The reasons for ending the tenancy are because the

Tenants are alleged to have repeatedly paid rent late, and have assigned or sublet the rental unit without the Landlord's written consent.

The Co-Landlord was first asked to provide evidence and testimony around the rent payments. The Co-Landlord testified that the Tenants have been habitually late paying rent. The Co-Landlord struggled to provide oral evidence of the rent payments. As a result, I asked the Tenant to present their evidence of rent payments made during this tenancy for which they were disputing.

The Tenant testified that she paid rent for January 2016 in advance on December 28, 2015 because of the holiday period. The Tenant testified that she paid her rent on time for February and April 2016. The Tenant testified that she paid her rent for March 2016 on March 2, 2016 because this was a Sunday and the store which the Landlord operates where she pays her rent to was closed. The Tenant testified that again the store was closed on May 1, 2016 and therefore she paid rent to the Landlord on May 2, 2016.

The Tenant testified that they withheld a portion of the rent for June 2016 because the Landlord had failed to do repairs. However, they paid the outstanding balance on June 9, 2016 after they were served the 10 Day Notice. The Tenant testified that they paid rent for July 2016 on July 4, 2016. The Tenant testified that when she was late paying her rent she had a verbal agreement with the Landlord that she could pay it the next day after it was due.

The Co-Landlord confirmed the late payments the Tenant had testified to but explained that they did not have any verbal agreement for the Tenants to pay rent late and that the store is open on Sundays. The Co-Landlord testified that the Landlord visited the Tenants' rental until on two occasions to get rent on July 1, 2016 but there was no answer from the Tenants. The Landlord was unwilling to continue the tenancy with the Tenants.

### Analysis

In examining the 1 Month Notice, I find that the contents of the Notice complied with Section 52 of the Act and the manner in which it was served to the Tenants also complied with Section 88(g) Act. I find that the Tenants disputed the 1 Month Notice within the 10 day time limit afforded to them under Section 47(4) of the Act. I also find that the Notice allowed for a full rental month of notice to expire before the vacancy date is to take effect pursuant to Section 47(2) of the Act.

When a landlord serves a tenant with a 1 Month Notice, the landlord bears the burden to prove one of the reasons on the notice. If one of the reasons is proved then the 1 Month Notice cannot be cancelled and must be upheld. Section 26 of the Act requires a tenant to pay rent on the day that it is due irrespective of whether the landlord complies with the Act.

In this case, I find that the parties established a written agreement which made it clear that the Tenants had an obligation to pay rent on or before the **first** day of each month. Furthermore, Policy Guideline 38 to the Act states, in part:

*“The Residential Tenancy Act and the Manufactured Home Park Tenancy Act both provide that 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.*

*It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be “repeatedly” late.”*

[Reproduced as written]

In consideration of the parties’ evidence, I make the following findings. I find that when the Tenants signed the written tenancy agreement, the Tenants had a responsibility to ensure the Landlord was provided with rent payment on or before the day it was due. I find the Tenants demonstrated an understanding of this obligation because they paid their rent in advance for January 2016 due to it being a holiday period. As a result, the Tenants should have continued this wise practice to ensure the Landlord received rent on time, which I find they did not do.

The Act does not allow a tenant to make rent payment if the first day of that month falls on a weekend or a day that it is inconvenient for the tenant to make the payment. The Act also does not allow a tenant to make deductions from rent due to a failure of a landlord to make repairs to the rental unit. The point of a tenancy agreement and the Act is to give clear information and legal obligation to a tenant to pay rent on the day it is due. A tenant is not allowed to make rent payments when it suits them. Furthermore, there is not sufficient evidence before me that the Tenants were given consent to make the late rent payments established during the hearing as this “verbal agreement” was disputed by the Landlord.

I find that within the last seven months of this tenancy, the Tenants have paid their rent late four times and this is sufficient evidence that the tenancy must end pursuant to the 1 Month Notice for repeatedly late payment of rent.

As I have made a finding that the Landlord has proved the 1 Month Notice in relation to repeatedly late payment of rent, I did not consider the parties' evidence in relation to the 1 Month Notice for the illegal sublet of the rental unit as this reason is now moot. As a result, I dismiss the Tenants' Application to cancel the 1 Month Notice.

Section 55(1) of the Act states that if a tenant makes an Application to dispute a Notice the Arbitrator **must** grant an Order of Possession if the Notice complies with the Act and the tenant's application is dismissed. As I have made a finding that the Notice complies with Section 52 of the Act and the Tenants' Application to cancel the 1 Month Notice is dismissed, the Landlord must be granted an Order of Possession.

This order is effective at 1:00 p.m. on July 31, 2016 in accordance with the vacancy date on the Notice. The Tenants must be served with a copy of the order and this may be enforced through the Supreme Court of British Columbia if the Tenants fail to vacate the rental unit.

### Conclusion

I find the Tenants have repeatedly paid rent late and that the 1 Month Notice is valid and should not be cancelled. The Landlord is entitled to an Order of Possession, effective at 1:00 p.m. on July 31, 2016 to end the tenancy. The Tenants' Application for a reduction in the value of the tenancy is dismissed with leave to re-apply.

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: July 14, 2016

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Residential Tenancy Branch