



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes            CNC, MNR, OLC, RP, RR, O, FF

### Introduction

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

- cancellation of the landlords' 1 Month Notice to End Tenancy for Cause, dated January 27, 2017 ("1 Month Notice"), pursuant to section 47;
- a monetary order for the cost of emergency repairs, pursuant to section 67;
- an order requiring the landlords to comply with the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 62;
- an order requiring the landlords to make repairs to the rental unit, pursuant to section 33;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- other unspecified remedies; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two landlords, male and female, and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 104 minutes in order to allow both parties, particularly the tenant who spoke for most of the hearing time, to fully present their submissions.

The landlords confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlords' written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlords were duly served with the tenants' application and the tenant was duly served with the landlords' written evidence package.

The tenant confirmed receipt of the landlords' 1 Month Notice on January 27, 2017, in the mailbox at the rental unit. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlords' 1 Month Notice.

Neither party raised any jurisdictional arguments at this hearing.

During the hearing, the tenant did not provide any evidence regarding her application for "other" unspecified remedies. Accordingly, this portion of her application is dismissed without leave to reapply.

### Issues to be Decided

Should the landlords' 1 Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

Is the tenant entitled to a monetary order for the cost of emergency repairs?

Is the tenant entitled to an order requiring the landlords to comply with the *Act, Regulation* or tenancy agreement?

Is the tenant entitled to an order requiring the landlords to make repairs to the rental unit?

Is the tenant entitled to an order to allow her to reduce rent for repairs, services or facilities agreed upon but not provided?

Is the tenant entitled to recover the filing fee for this application from the landlords?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal and relevant aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on November 1, 2014. Monthly rent in the amount of \$2,400.00 is payable biweekly on the first and fifteenth day of each month in the amount of \$1,200.00 for each payment, as per the parties' agreement in January 2015. A security deposit of \$1,200.00 was paid by the tenant and the landlords continue to retain this deposit. A copy of the written tenancy agreement was provided for this hearing; however, the tenancy agreement does not indicate a start date, the term of the tenancy period, the amount of rent or the due dates of rent. The parties agreed to these terms verbally during the tenancy, as they were focussed more on the first right of refusal for this property that the tenant initially intended to buy but did not end up purchasing from the landlords. The tenant continues to reside in the rental unit.

The tenant seeks to cancel the landlords' 1 Month Notice. The notice indicates an effective move-out date of February 28, 2017. The landlords issued the 1 Month Notice indicating the following reasons:

- *Tenant is repeatedly late paying rent.*
- *Tenant has allowed an unreasonable number of occupants in the unit/site.*
- *Tenant or a person permitted on the property by the tenant has:*
  - *put the landlord's property at significant risk.*

Both parties agreed that the tenant paid rent late more than three times during this tenancy. The landlords testified that the tenant has been late paying rent at least sixteen times during this tenancy; they confirmed that they only have written proof of late payment for seven occasions between March 15, 2016 and February 15, 2017. They indicated these dates on the 1 Month Notice "details of cause" box. The landlords provided documentary evidence including emails between the parties confirming the dates of late rent payments.

The tenant agreed that she was late paying rent only five times: March 15, 2016, May 21, 2016, June 15, 2016, August 15, 2016, and January 15, 2017. She disagreed with the landlords that she was late on November 1, 2016 and February 15, 2016. The tenant maintained that the landlords insisted on receiving rent payments by e-transfer so she was late paying rent because she had to wait for her customers to transfer money into her bank account in order to pay the landlords. She claimed that the customers would transfer the money late to her. She stated that she was not forced to pay by e-transfer and she agreed in her emails to pay using this method. The landlords claimed that the tenant insisted on paying rent by cheque instead of e-transfer, to which they agreed, but even after that, the tenant still paid by e-transfer.

The tenant further claimed that any late rent payments prior to October 5, 2016 "did not count" because she filed for bankruptcy and her lawyer told her the above information. The tenant's lawyer did not appear at this hearing, nor did the tenant provide documentary evidence from her lawyer, regarding this legal advice. The landlords argued that the tenant's bankruptcy claim is not relevant for late payment of rent; they maintain that she still paid the rent, but it was late. They claimed that they were not creditors, as they did not file a claim after the tenant declared bankruptcy.

The tenant seeks a rent reduction of \$55.00 per month for the loss of use of a storage space at the rental unit. The tenant claimed that she was entitled to use the workshop area at the rental property for storage but the landlords stored all their belongings there, denied the tenant access and did not provide any notice to her. She stated that two years of not being able to use this space, based on the smallest storage unit cost per month at \$55.00, was reasonable. She claimed that although there was no written agreement between the parties for the use of this workshop area from the beginning of the tenancy, the landlords referred to it in their emails and it was a verbal agreement.

The landlords provided a copy of an email that they sent to the tenant's agent on September 10, 2014, before the tenant moved in to the rental unit, stating that the workshop space was not appropriate for the tenant to use, due to safety and other concerns, and offering an alternate space for her to use for storage. They claimed that they did not sign an agreement with the tenant for the use of the space and the tenant waived her right to claim for it by waiting two years to file an application for the use of it.

## Analysis

### 1 Month Notice

According to subsection 47(4) of the *Act*, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant receives the notice. The tenant received the 1 Month Notice on January 27, 2017 and filed her application to dispute it on February 2, 2017. Therefore, the tenant is within the ten day time limit under the *Act*. The onus, therefore, shifts to the landlords to justify the basis of the 1 Month Notice.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement. Both parties agreed that rent was due biweekly on the first and fifteenth day of each month, as per their verbal agreement. Residential Tenancy Policy Guideline 38 states that “three late payments are the minimum number sufficient to justify a notice...” The landlords provided documentary evidence in the form of emails between the parties, where the tenant admits to the late payment of rent. The tenant also testified verbally during the hearing that her rent was late more than three times during this tenancy.

I do not accept the tenant’s argument that because she claimed bankruptcy on October 5, 2016, none of her late rent payments before that date, “count.” The fact that the tenant declared bankruptcy does not alter her obligations under a tenancy agreement or the *Act* and does not excuse past late rent payments as grounds for ending the tenancy. The tenant was well aware of the rent payment due dates, still paid her rent to the landlords, but just paid it late. The tenant’s reasons for paying late have nothing to do with her bankruptcy filing. The landlords are not creditors and have not filed any claims against the tenant pursuant to her bankruptcy filing. I also find that the landlords did not force the tenant to pay rent by e-transfer only. The tenant asked to pay by cheques and then continued to pay by e-transfer. The tenant’s rent was late because she was paid late by her customers, as she explained during the hearing, which has nothing to do with the landlords.

Accordingly, I find that the tenant was late paying rent at least three times during this tenancy. I find that the landlords’ 1 Month Notice was issued for a valid reason. The tenants’ application to cancel the landlords’ 1 Month Notice is dismissed without leave to reapply. As I have dismissed the tenants’ application, the landlords are entitled to an order of possession pursuant to section 55 of the *Act*, as the landlords’ 1 Month Notice complies with section 52 of the *Act*.

I find that this tenancy ended on February 28, 2017, the effective date of the 1 Month Notice. I issue an **Order of Possession to the landlords effective seven (7) days after service on the tenant**. I allow the tenant more time to vacate than the two-day order of possession because she has children living with her as well as a daycare operation that may pose a difficulty in moving quickly. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

As I have issued an order of possession for cause based on one reason in the 1 Month Notice, it is not necessary for me to explore the other reasons in the notice. Accordingly, I have not included the parties' testimony on these other notice reasons in this decision.

### Repairs

I order the landlords, at their own cost, to have a certified, licensed pest control representative inspect the rental property by March 10, 2017, and to complete any recommended pest control remediation after inspection, by March 24, 2017. This pest control is in reference to the silverfish and rats at the rental property that both parties testified about during the hearing. The landlords agreed to this request by the tenant, during the hearing.

I order the landlords, at their own cost, to inspect the fence at the rental property by March 10, 2017, and to complete any required repairs determined upon inspection, in order to ensure the safety of the tenant, any other occupants and guests at the rental property. The male landlord confirmed that he works in this trade area and that he would be able to personally perform any inspection and repairs of the fence. The landlords agreed to this request by the tenant, during the hearing.

### Monetary Orders and Rent Reduction

I dismiss the tenant's claims for \$3,790.00 for a fence replacement and \$1,430.00 for repair of the workshop area. The tenant testified that she estimated these costs but did not pay for them. Therefore, I find that she is not entitled to any reimbursement from the landlords.

I dismiss the tenant's claim for \$272.00 for a CRD water bill. The tenant testified that she owes this money to the landlords. The landlords claimed that this money has been added on to their property taxes because the tenant did not pay for it.

I dismiss the tenant's claim of \$300.00 for the tents that she said were destroyed by the rats at the rental property. The tenant did not provide any proof of this cost. It is the tenant's burden of proof, on a balance of probabilities, to prove this claim.

I dismiss the tenant's claim for a rent reduction of \$55.00 per month. There is no written agreement between the parties for the tenant to use the workshop area at the rental unit for storage. It is also not included in the parties' written tenancy agreement. The landlords' email of September 10, 2014, before the tenant moved in to the rental unit, states that the workshop space is not appropriate for the tenant to use, due to safety and other concerns, and offering an alternate space for her to use for storage. The tenant did not respond to that email regarding the storage space; her agent only attached the tenancy agreement addendum in response.

As the tenant was mainly unsuccessful in her application, I find that she is not entitled to recover the \$100.00 filing fee paid for this application. The tenant must bear the cost of this fee.

Conclusion

I grant an Order of Possession to the landlords effective seven (7) days after service on the tenant. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the landlords to complete the inspection and repairs as noted above. The remainder of the tenant's application is dismissed 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: March 16, 2017

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Residential Tenancy Branch