



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, MNDC, ERP, RP, FF

### Introduction

This hearing was scheduled to consider 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;
- a monetary award for damages and loss pursuant to section 67;
- an order that the landlord perform repairs or emergency repairs pursuant to section 33; and
- authorization to recover the filing fees from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant KB (the "tenant") appeared and was assisted by her support worker. The landlord was represented by a co-landlord SD (the "landlord").

As both parties were in attendance I confirmed that there were no issues with service of the landlord's 1 Month Notice, the tenants' application for dispute resolution or either party's evidentiary materials. The parties confirmed receipt of one another's materials. In accordance with sections 88 and 89 of the *Act*, I find that the parties were duly served with copies of the landlord's Notice, the tenants' application and their respective evidence.

### Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Are the tenants entitled to a monetary award as claimed?

Should the landlord be ordered to make repairs or emergency repairs to the rental unit?

Are the tenants entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

The parties agreed on the following facts. This month to month tenancy began in May, 2015. The current monthly rent is \$1,192.00. One of the reasons provided on the 1 Month Notice issued by the landlord is that the tenants have been repeatedly late paying rent. During the past year the tenants have failed to pay the rent by the 1<sup>st</sup> of the month on 7 occasions.

The tenant testified that she believed that while the tenancy agreement states that rent is payable on the 1<sup>st</sup>, the rent is actually not due until the 7<sup>th</sup> of each month. The landlord disputed that there is an agreement that the tenants may pay the rent after the 1<sup>st</sup>. A copy of a text conversation submitted into written evidence shows that the landlord accepted late payment but does not indicate that there is a new due date for the rent. The landlord submitted into evidence copies of the etransfer receipts showing the tenants' payments.

The tenant spoke generally about issues with the plumbing in the rental unit. The tenant referenced an incident of flooding and alluded to black mold. The tenant seeks a monetary award of \$575.00. The tenant said she chose the amount at random as approximately half of the monthly rent. The tenant did not submit receipts, invoices or quotes into written evidence. The landlord disputes that the tenant suffered any loss.

### Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter at hand the landlord must demonstrate that the tenants have been repeatedly late paying rent. Residential Tenancy Policy Guideline 38 provides that three late payments are the minimum number to justify a notice to end tenancy. I accept the parties' evidence that the tenants have been late paying rent for the majority of the past year. I find that the tenants have been repeatedly late paying rent.

Accordingly, I find that the landlord has shown on a balance that there is cause to end this tenancy and dismiss the tenants' application.

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.*

The landlord's 1 Month Notice meets the form and content requirements of section 52 of the *Act* as it is in the approved form and clearly identifies the parties, the address of the rental unit and the effective date of the notice. The notice provides the reasons for ending the tenancy, the repeated late payment of rent.

As I have dismissed the tenant's application to dispute the 1 Month Notice, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*. As the effective date has passed, I issue an Order of Possession effective 2 days after service.

Pursuant to Rule of Procedure 6.6 the onus to prove their case on a balance of probabilities lies with the applicant making the claim. I find that the tenants have not provided sufficient evidence in support of their application for a monetary award or repair order. The tenant provided vague testimony, generalizations and allusion to issues with the rental unit. The photographs submitted into written evidence by the tenants appear to be random angles of a residence and the tenant failed to provide context or explanation as to what they are intended to show. I find that the tenants have provided insufficient evidence in support of their claims and accordingly dismiss them.

As the tenants' application was unsuccessful the tenants are not entitled to recover their filing fee.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant(s)**. Should the tenants or any occupant 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.

The tenants' 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: November 22, 2017

---

Residential Tenancy Branch