



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, MNDCT, OLC, FFT

### Introduction

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

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord and Tenant J.D. 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. Tenant J.D. testified that he was representing the interests of both tenants.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The landlord acknowledged receipt of the Application for Dispute Resolution (the Application) and evidentiary package sent by registered mail on November 20, 2017. In accordance with sections 88 and 89 of the *Act*, I find the landlord was duly served with the Application and evidentiary package.

The tenant served an additional piece of evidence by leaving it in the shared mailbox at the residential premises on December 29, 2017. The landlord acknowledged receiving this additional evidence on December 31, 2017. In accordance with section 88 of the *Act*, I find the tenant was duly served with the tenant's additional piece of evidence.

The landlord confirmed that they did not submit any evidence.

The tenant acknowledged receipt of the One Month Notice which was personally served to the tenant on November 02, 2017. In accordance with section 88 of the *Act*, I find the tenants were duly served with the One Month Notice.

Issue(s) to be Decided

Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession based on the One Month Notice?

Are the tenants entitled to a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Are the tenants entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

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

Background and Evidence

The tenant testified that this tenancy began on February 01, 2016, before the landlord took possession of the residential premises and moved into a separate unit in the premises. The landlord and the tenant agreed that the current monthly rent is \$1,664.00, due on the first day of the month. The tenant and the landlord agreed that the landlord currently retains a security deposit in the amount of \$800.00.

A copy of the landlord's signed November 02, 2017, One Month Notice was entered into evidence. In the One Month Notice, requiring the tenant to end this tenancy by December 01, 2017, the landlord cited the following reason for the issuance of the One Month Notice:

*Tenant is repeatedly late paying rent.*

The tenant also submitted the following evidentiary material:

- screenshots of texts exchanged between the landlord and the tenant regarding the late payment of rent for September 2017, October 2017 and November 2017; and

- A copy of a letter dated December 29, 2017, from the tenant to the landlord regarding concerns about the deck being cleaned and the relationship between the landlord and the tenants;

The landlord testified that they recently moved into a suite on September 01, 2017, within the residential premises that they recently purchased, which is separate from the tenants' rental unit. The landlord submitted that since he became the landlord for the rental unit in dispute, the tenants have paid the rent late for September, 2017, October 2017 and November 2017.

The landlord stated that Tenant J.D. has been hostile since the landlord moved into the suite and that when the landlord asked for the rent for September 2017 the tenant was evasive and only paid the rent on September 04, 2017. The landlord testified that on October 01, 2017, he sent a text to the tenant for payment of the monthly rent and the tenant did not pay it until October 02, 2017. The landlord submitted that the tenant sent him a text on November 02, 2017, letting the landlord know that the cheque for the monthly rent was in the shared mailbox since November 01, 2017.

The tenant confirmed that the relationship between him and the landlord has been strained since the landlord moved into one of the suites. The tenant confirmed that the September 2017 rent was late as well as the October 2017 rent but stated that he was not able to find the landlord to pay the rent for October 2017 on time. The tenant testified that he put the cheque for the November 2017 rent in the shared mailbox on November 01, 2017, but that the landlord did not check the mailbox until the tenant sent him a text to do so. The tenant submitted in the details of the dispute that the only monetary compensation they are seeking is the filing fee for this Application.

### Analysis

Section 47 of the *Act* allows a landlord to issue a One Month Notice to End Tenancy for Cause to a tenant if they are repeatedly late paying the monthly rent.

Section 47 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 the grounds for the One Month Notice. As the tenant disputed this notice on November 09, 2017, and since I have found that the One Month Notice was served to the tenants on November 02, 2017, I find the tenants have applied to dispute the One Month Notice within the time frame provided by section 47 of the *Act*.

The landlord bears the burden of demonstrating on a balance of probabilities that the tenant has been repeatedly late paying the rent.

I have reviewed all documentary evidence and the affirmed testimony of both parties and I find that the landlord has demonstrated that the tenants have been repeatedly late paying the rent.

Residential Tenancy Policy Guideline #38 (PG#38) states that; "Three late payments are the minimum number sufficient to justify a notice under these provisions."

I find that that the tenant has confirmed in their testimony, which is supported by the text messages exchanged between the landlord and the tenant, to paying the rent late for the first two months of the new landlord collecting the monthly rent.

Although the tenant states that they put the rent cheque for November 2017 in the shared mailbox on November 01, 2017, section 90 of the *Act*, establishes that a document served by leaving it in a mailbox is only deemed to be received by the other party on the third day after it is left unless confirmed that it is received earlier. I find that the landlord confirmed receipt of the rent cheque on November 02, 2017, and as rent is due on the first of the month, the November 2017 rent payment is also late.

I find the tenants have paid the rent late three times in the first three months of their tenancy with the new landlord. I accept the landlord's testimony, which the tenant did not dispute, that the landlord asked for the monthly rent when it was not paid on the first of the month in September 2017 and October 2017. I find that, due to the landlord asking the tenant about rent when it was not paid on the first of the month, the tenant should have known that the landlord expected rent to be paid on the day it was due.

For the above reasons, I find the landlord has sufficient grounds to issue the One Month Notice and to end this tenancy for cause and the Application to set aside the One Month Notice is dismissed, without leave to reapply.

Section 55(1) of the *Residential Tenancy Act* provides that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the Arbitrator must grant the landlord an order of possession if the notice complies with section 52 of the *Act*. I find that the One Month Notice complies with section 52 of the *Act*. For these reasons, I grant a two day Order of Possession to the landlord.

I note that if the tenants have paid the full monthly rent for February 2018, the landlord is at liberty to choose to enforce the Order of Possession at the end of February 2018. If the landlord chooses to enforce the order earlier he should return any portions of the rent equal to the time the tenants vacate the rental until the end of the month.

As this tenancy is ending, I find the tenants' request for the landlord to comply with the *Act* is no longer applicable and I dismiss it, without leave to reapply.

As the tenants have not been successful in their Application, I dismiss their request to recover the filing fee from the landlord and for compensation for damage or loss under the *Act*, Regulations or tenancy agreement, without leave to reapply.

#### Conclusion

I dismiss the tenants' Application in its entirety, without leave to reapply.

I grant an Order of Possession to the landlord **effective two days after service of this Order** on the tenant. Should the tenant(s) 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.

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: February 02, 2018

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Residential Tenancy Branch