



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding TOP VISION REALTY AND LONSDALE LAW  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC, CNC, MND, FF

### Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for cause pursuant to section 55;
- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed receipt of the notice of hearing package(s) and the submitted documentary evidence provided by the other party. As both parties have attended and have confirmed receipt of the notice of hearing package(s) and the submitted documentary evidence, I am satisfied that both parties have been sufficiently served as per section 90 of the *Act*.

### Preliminary Issue(s)

At the outset it was clarified with both parties that the named applicant(s) and the named respondent(s) did not match. Discussions with both parties determined that the

landlord is E.V. and that Top Vision Realty is an agent for the landlord; the tenant is S.S. and that Lonsdale Law is an agent for the tenant. As such, the style of cause for these applications shall be amended to reflect the proper names of both participants.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the tenant entitled to an order canceling the 1 Month Notice?

Is the landlord entitled to a monetary order for damage and recovery of the filing fee?

Is the tenant entitled to a monetary order for recovery of the filing fee?

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 respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on December 15, 2014 on a fixed term until December 14, 2015 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated November 24, 2014. The monthly rent began at \$1,600.00 payable on the 1<sup>st</sup> day of each month. The monthly rent was later raised to \$1,707.31 based upon notice of rent increase dated November 19, 2016.

The landlord seeks an order of possession for cause and a monetary claim of \$2,199.99 for damage(s) which consists of:

\$2,199.99	Strata Bylaw Violation Fines
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On January 11, 2018, the landlord served the tenant with the 1 Month Notice dated January 11, 2018. The 1 Month Notice sets out an effective end of tenancy date of February 11, 2018 and that it was being given as:

- the tenant is repeatedly late paying rent;
- the tenant has caused extraordinary damage to the unit.
- the tenant has not done required repairs of damage to the unit/site.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

It was clarified with both parties that as the monthly rent is due on the 1<sup>st</sup> day of each month that the effective end of tenancy date on the 1 Month Notice dated January 11, 2018 is corrected to February 28, 2018.

The details of cause listed on the 1 Month Notice dated January 11, 2018 states:

Tenant damaged the blinds at unit 303- 888 Pacific St. It violated Strata bylaw. Strata company sent bylaw violation letter and fines to (Landlord's agent name) and owner since Jan 2017. (Landlord's agent name) communicated with Tenants.

Both parties confirmed that the landlord served the tenant with the 1 Month Notice dated January 11, 2018 by posting it on the rental unit door.

The landlord claims that the tenant has been repeatedly late paying rent on atleast 4 occasions. The landlord states that the tenant was late paying rent:

April 10, 2017	Rent paid late
August 8, 2017	Rent paid late
October 5, 2017	Rent paid late
December 7, 2017	Rent paid late

The tenant argued that rent cheques are available on the 1<sup>st</sup> day of each month for the landlord to pick up which the landlord has failed to do on those occasions. The landlord argued that they always request postdated cheques and that the tenant eventually issued cheques for the dates that rent was actually paid. The landlord clarified that when the postdated cheques run out it is very difficult to get new ones issued by the tenant which causes the late payment of rent. The landlord stated that the late rent was paid with cheques dated when they were received from the tenant as shown with the issued receipts. The landlord argued that if rent cheques were available on the 1<sup>st</sup> they would have been dated for the 1<sup>st</sup> instead of the date it was received from the tenant. The tenant argued that the cheques were left undated to be issued for rent.

The landlord also claims that in January 2017 the tenant was advised that a strata bylaw was being violated re: a red curtain hung in the solarium which caused complaints filed to the strata council that this was an "eyesore". The strata council issued a letter dated January 20, 2017 which was provided to the tenant which cautions the tenant that a fine could be issued if the issue is not corrected within 30 days. The landlord claims that the tenant failed to correct the issue and that on March 10, 2017 a letter was issued by the Strata council fining the landlord as no response was sent

regarding the January 20, 2017 letter nor was a hearing requested regarding the issue. In support of these claims the landlord has provided copies of the letters and photographs provided by the strata council.

The tenant argued that upon being notified the red curtain/blind issue was resolved in the summer of 2017 as shown by the tenant's submission of a photograph showing no red curtain in the window.

The landlord argued that the tenant failed to comply with the original caution letters as a letter dated September 8, 2017 was issued that the Strata council found that the broken blind was still unresolved. The landlord also claims that the tenant was again cautioned that the matter needed to be resolved by September 30, 2017 or a fine would be imposed. The landlord argued that the tenant failed to resolve the issue and that the landlord continued to be fined by the strata as outlined in the "Transaction Listing" provided. The tenant argued that the blind is the responsibility of the landlord and that the noted damage was due to wear and tear.

The landlord also seeks recovery of the strata bylaw fines caused by the tenant. The landlord has provided a copy of the "Transaction Listing" from the Strata which outlines the date of each Strata issued fine and the amount totalling \$2,199.99.

The tenant argued that the strata fines should be the responsibility of the landlord as the claimed damage of the blinds was due to wear and tear.

### 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.

The landlord claims that the tenant has been repeatedly late paying rent and has caused extraordinary damage to the blinds, has not done the required repairs to the damaged blind and has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice.

In this case, I accept the evidence of both parties that rent has been repeatedly paid late as outlined by the landlord's records. The tenant has argued that this is as a result of the landlord failing to claim the rent on the 1<sup>st</sup> day of the month and then later picking it up on the days outlined. I find on a balance of probabilities after reviewing the testimony of both parties that I prefer the evidence of the landlord over that of the

tenant. It is more probable that if the tenant's rent cheque was available for pickup on the 1<sup>st</sup> day of each month that the cheque would be completed and dated for the 1<sup>st</sup> of the month as opposed to the various different dates provided on those cheques. I do not accept that the tenant would partially fill out the cheque and leave the date blank to be filled out by his wife at a later time. This is supported by the multiple 10 Day Notice(s) which were issued by the landlord. As such, I find that the landlord has provided sufficient evidence that the tenant has been repeatedly late paying rent.

Residential Tenancy Branch Policy Guideline #38, states in part 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. In this situation the landlord has provided sufficient evidence that the tenant has been late paying rent on at least 4 occasions. As such, the tenant's application to cancel the 1 Month Notice is dismissed. The 1 Month Notice dated January 11, 2018 is upheld. The landlord is granted an order of possession. As the effective date of the 1 Month Notice has now passed, I direct that the order of possession to be effective 2 days after service upon the tenant.

As the 1 Month Notice is upheld, I decline to make any further findings on the remaining reasons for cause.

As for the landlord's monetary claim of \$2,199.99, I find that the Strata fines were imposed as a result of findings made by the Strata council. This is documented in the landlord's provided letters from the Strata Council and the "Transaction Listing" for the rental premises. The reasons for the fines were for violations caused by the tenant and not due to wear and tear. As noted by the landlord, fines were issued for non-compliance for appearance of the window coverings and not due to damage. The landlord is successful in this portion of the claim.

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee.

### Conclusion

The tenant's application is dismissed without leave to reapply.

The landlord is granted an order of possession.

The landlord is granted a monetary order for \$2,299.99.

These orders must be served upon the tenant. Should the tenant fail to comply with these orders, these orders may be filed in the Supreme Court of British Columbia and the Small Claims Division of the Provincial Court and enforced as orders of those courts.

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 21, 2018

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Residential Tenancy Branch