



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding GRAF GROUP DEVELOPMENT LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes           CNC, FFT, RP

### Introduction

On August 2, 2018, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the "Notice") pursuant to Section 47 of the *Residential Tenancy Act* (the "*Act*"), seeking a Repair Order pursuant to Section 32 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing. J.E. attended the hearing as an agent for the Landlord and R.G. appeared as the owner/Landlord. All in attendance provided a solemn affirmation.

The Tenant advised that he served the Landlord with the Notice of Hearing package and his evidence by registered mail on August 3, 2018 and the Landlord confirmed receipt of this. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing package and evidence.

The Landlord's agent advised that their evidence was served to the Tenant by hand on September 11, 2018 and the Tenant confirmed receipt of this. As this complies with Rule 3.15 of the Rules of Procedure, I have accepted the evidence when rendering this decision.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed the Landlord's Notice and the other claims were dismissed. The Tenant is at liberty to apply for any other claims under a new and separate Application.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if

the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

#### Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?

#### Background and Evidence

All parties agreed that the tenancy started on October 1, 1992 and rent was currently established at \$1,250.00, due on the first day of each month. A security deposit of \$450.00 was also paid.

The Landlord stated that he served the Notice to the Tenant by hand on July 30, 2018 and the Tenant confirmed this. The reasons the Landlord served the Notice are because the "Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to: adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant and jeopardize a lawful right or interest of another occupant or the landlord." The Landlord also checked off that there was a "Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so."

The Landlord's agent stated that he served an amended Notice to the Tenant by hand on July 31, 2018 and the Tenant confirmed this. The amended Notice indicated that the Tenant was habitually late paying rent, and this was also a material breach of the tenancy. The effective date of the Notice was August 31, 2018.

The Landlord's agent submitted that the Tenant paid rent late in May, June, July, and September 2018. He referenced a Rental Payment History submitted into evidence demonstrating more instances of late rental payments. He also cited an email sent to the Tenant advising that rent was late.

The Tenant advised that he did not realize that he had paid rent late so often and he was under the mistaken belief that if the first day of the month fell on a weekend, that rent would be due on the first business day of that month. He stated that he had advised the Landlord's agent of financial difficulties that he had been experiencing and that the Landlord had verbally agreed to late payments of rent. However, he did not have any written authorization from the Landlord to pay rent late. He acknowledged that he had received an email in the past reminding him that rent was late.

### Analysis

In considering this matter, I have reviewed the Landlord's Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52 and I find that it is a valid Notice.

I find it important to note that a Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part as follows:

#### ***Landlord's notice: cause***

**47** (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*

*(b) the tenant is repeatedly late paying rent;*

In addition, I note the wording of Policy Guideline #38 provides the following guidance regarding the circumstances whereby 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...*

*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...*

Section 26(1) of the *Act* establishes that "a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent."

The undisputed evidence before me is that the tenancy agreement requires the Tenant to pay all of the rent by the first of each month and that rent was not paid in full on the first of each month more than three times since May 2018. Furthermore, there is no substantiated evidence before me that the Tenant was allowed to pay rent late contrary to the tenancy agreement. Consequently, I am satisfied that there is a pattern of multiple late payments of rent throughout the months leading up to the issuance of the Notice.

Ultimately, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 52 and 55 of the *Act*. However, the Landlord allowed more time for the Tenant to vacate the rental unit. As such, I exercise my authority pursuant to Section 55 of the *Act* to extend the effective date of the Notice. Consequently, the Order of Possession takes effect at **1:00 PM on December 31, 2018**. As a note, the Tenant must still pay October, November, and December 2018 rent in full.

As the Tenant was unsuccessful in this application, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

I dismiss the Tenant's Application and uphold the Notice. I grant an Order of Possession to the Landlord effective at **1:00 PM on December 31, 2018 after service of this Order** on the Tenant. Should the Tenant 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: September 28, 2018

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Residential Tenancy Branch