



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

OPC

### Introduction

This hearing dealt with the landlord's application pursuant to section 55 of the *Residential Tenancy Act* (the *Act*) for an Order of Possession for cause based on the 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) issued to the tenant.

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 is the landlord's son and the sister of the landlord's agent who attended this hearing. As the tenant confirmed that he received the 1 Month Notice posted on his door by the landlord on September 21, 2018, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*. As the tenant confirmed that he received a copy of the landlord's dispute resolution hearing package sent to the tenant by the landlord by registered mail on October 27, 2018, I find that the tenant was duly served with this package in accordance with section 89 of the *Act*.

Although the tenant said that he submitted an online application for dispute resolution to cancel the landlord's 1 Month Notice, the tenant testified that he had not received confirmation that a hearing had been scheduled for his application. The tenant said that he understood that the notification provided to him by the landlord included his own application to dispute the 1 Month Notice.

At the hearing, I was able to confirm that the Residential Tenancy Branch (the RTB) had received an application from the tenant, but it did not appear that any hearing had been scheduled as a result of that application. Following the hearing, I discovered that the tenant had commenced an application to the RTB to cancel the 1 Month Notice, but had not proceeded to pay the \$100.00 filing fee within three days of starting his application. Without this payment or submission of information to support a request for a fee waiver, the tenant's application was not completed, explaining why no hearing had been scheduled to consider an application by the tenant to dispute the 1 Month Notice.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for cause based on the landlord's 1 Month Notice?

Background and Evidence

This tenancy is for a separate suite in the landlord's property where the tenant has been residing since November 2011. Although no written tenancy agreement was entered into, nor is any rent paid by the tenant directly to the landlord, the agent and the tenant agreed that the arrangement between the landlord and tenant was that the tenant would pay the strata fees and the utilities for these premises. The tenant gave undisputed sworn testimony that the current strata fee is \$184.00 per month.

The landlord entered into written evidence a copy of the 1 Month Notice requiring the tenant to end this tenancy by October 21, 2018, for 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:*

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
- *put the landlord's property at significant risk.*

*Tenant has engaged in illegal activity that has, or is likely to:*

- *damage the landlord's property;*
- *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;*
- *jeopardize a lawful right or interest of another occupant or the landlord.*

*Tenant has caused extraordinary damage to the unit/site or property/park.*

At the hearing, the agent testified that the tenant's strata and utility payments are routinely late and that the landlord has an affidavit, not entered into written evidence, that there is now in excess of \$11,000.00 owed by the tenant for this property.

The tenant did not dispute the agent's claim that strata payments are usually late. The tenant testified that he has been late in paying strata payments, the rent which the parties have agreed that the tenant pays on the landlord's behalf, on at least five occasions during the past year. The tenant also confirmed that there are outstanding strata amounts owing, but not as much as

was claimed by the strata or the landlord. He said that he paid a large lump sum at one point to the strata, which has not been properly reflected in their accounts. He said that he paid the November strata bill the day before this hearing. The tenant also confirmed that utility payments remain owing from as far back as June or July 2018. The tenant stated that some of the amounts requested in the utility bills are not accurate as there has apparently been some type of mixup in the bills sent to him.

### Analysis

Section 1 of the *Act* defines rent in the following terms:

"rent" means money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities,...

Although there is no written tenancy agreement between these parties, oral agreements are permitted under the *Act*. In this case, I find that there is an oral contract between the parties which involves the landlord's provision of living accommodation to the tenant in exchange for the tenant's making strata payments directly to the strata corporation for this rental property. I find that this oral contract constitutes a tenancy agreement as the tenant has agreed to make strata payments directly to the strata corporation as a matter of convenience rather than making these payments directly to the landlord and then having the landlord forward these payments to the strata corporation. Similarly, the tenant has agreed to pay utilities directly to the utility companies rather than the two-step process of paying the landlord and then having the landlord pay the utility company. Both of these sets of payments are considered rent for the purposes of the *Act*.

Section 47 of the *Act* contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 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 received the notice. Section 47(5) of the *Act* reads as follows:

*(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant*

*(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and*

*(b) must vacate the rental unit by that date...*

As was noted above, the tenant does not appear to have followed through with all of the steps required to apply to dispute the 1 Month Notice as he failed to pay the filing fee for the application. In accordance with section 47(5) of the *Act*, the tenant's failure to complete the application to cancel the landlord's 1 Month Notice within ten days led to the end of this tenancy

on the corrected effective date of the notice. In this case, this required the tenant to vacate the premises by October 31, 2018.

Although I accept that there has been a conclusive presumption that the tenant has accepted that the tenancy ends on the effective date of the 1 Month Notice, I have also carefully considered the merits of the landlord's application. I have done so, as the tenant seemed genuinely confused as to why no hearing of his application to dispute the 1 Month Notice had been scheduled.

***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;***

RTB 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...*

In this case, there is undisputed sworn testimony from both parties that the tenant has been repeatedly late in the payments that he is required to make in lieu of the landlord charging him a monthly rental amount. By the tenant's admission he has been late in making his payments to the strata corporation on at least five occasions over the past year, is also well behind in his utility payments, which become rent after a one month delay in making such payments, and there is a sizeable outstanding amount still owed to the strata corporation. I am satisfied that there is a pattern of late payment of rent and utilities during the recent history of this tenancy leading up to the landlord's issuance of this 1 Month Notice. On this basis, even if the tenant's incomplete application to dispute the landlord's 1 Month Notice were accepted as a valid and complete application pursuant to section 47(4) of the *Act* (which it was not), I still find that the landlord had ample reason to end this tenancy for cause due to the tenant's recurring pattern of late payments for the only consideration he was paying as rent on the landlord's behalf.

Since the landlord had reason to end this tenancy for cause on the basis of section 47(1)(b) of the *Act*, there is no need to consider any of the other reasons cited in the 1 Month Notice for ending this tenancy.

Section 47(3) of the *Act* requires that "a notice under this section must comply with section 52 [form and content of notice to end tenancy]."

I am satisfied that the landlord's 1 Month Notice entered into written evidence was on the proper RTB form and complied with the content requirements of section 52 of the *Act*. For these reasons, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Conclusion

I grant an Order of Possession to the landlord effective **two days 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: December 04, 2018

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Residential Tenancy Branch