



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 956 MAIN STREET HOLDINGS  
LTD and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, CNR, LAT, MT  
                             MNRL-S, OPC, FFL

### Introduction

This teleconference hearing was scheduled in response to applications by both parties under the *Residential Tenancy Act* (the “Act”). The Tenant applied on December 28, 2018 to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”), and for an extension of time to dispute the notice. On January 7, 2019 the Tenant filed an amendment to add claims to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”) and for authorization to change the locks. The Landlord filed an application on January 8, 2019 for an Order of Possession based on a One Month Notice, for monetary compensation for unpaid rent and for the recovery of the filing fee paid for the Application for Dispute Resolution.

Three agents for the Landlord (the “Landlord”), as well as the Tenant and an agent for the Tenant (the “Tenant”) were present for the duration of the teleconference hearing. The parties confirmed receipt of the Notice of Dispute Resolution Proceeding package regarding the other party’s application as well as a copy of the other party’s evidence. As neither party brought up any concerns regarding service, I find that both parties were duly served as required by the *Residential Tenancy Branch Rules of Procedure* and in accordance with Sections 88 and 89 of the *Act*.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the *Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Preliminary Matters

During the hearing, the Landlord stated that the 10 Day Notice served to the Tenant on January 3, 2019 had been served in error and had been withdrawn. They stated that the Tenant was notified that the 10 Day Notice was being withdrawn by the Landlord and was not in effect. The Tenant confirmed that she was told this. As such, I find that there is not a 10 Day Notice in dispute and amend the Tenant's application to remove the claim to cancel the 10 Day Notice. This decision will address the remainder of the claims for both parties. The Tenant's application was amended pursuant to Section 64(3)(c) of the *Act*.

The Landlord included a claim for one month of unpaid rent for January 2019. However, they stated that they are now seeking February 2019 rent as well. As I find it reasonable that they would be seeking an additional month of rent while waiting for the scheduled dispute resolution proceeding, pursuant to Section 64(3)(c) of the *Act*, I amend their application to add an additional month of rent to their claim.

#### Issues to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled?

If the One Month Notice to End Tenancy for Cause is upheld, is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to monetary compensation for unpaid rent?

Should the Tenant be granted authorization to change the locks?

Should the Landlord be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

#### Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The parties were in agreement as to the details of the tenancy agreement which were also confirmed by the tenancy agreement submitted into evidence. The tenancy began on February 26, 2018. Monthly rent in the amount of \$690.00 is due on the first day of each month and a security deposit of \$395.00 was paid at the outset of the tenancy.

On November 27, 2018 the Landlord served the Tenant with a One Month Notice by posting the notice on the Tenant's door. The One Month Notice was included in evidence and states the following as the reason for ending the tenancy:

- 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 provided testimony that the One Month Notice was served to the Tenant due to her boyfriend moving in as a roommate, as well as the Tenant changing the lock to the rental unit without authorization.

The Landlord stated that they heard from the building manager as well as other tenants that the Tenant's boyfriend had moved in. They submitted into evidence an email from the building manager dated September 21, 2018 stating that he spoke to the Tenant's boyfriend who advised that he was living there.

The Landlord stated that they attempted to enter the rental unit for pest control services which is when they realized that the lock had been changed and they were not able to enter the unit to complete the treatment.

The Landlord stated that they issued a warning letter to the Tenant. The letter, dated November 19, 2018 was submitted into evidence and states that the Tenant had until November 23, 2018 to remove the additional occupant and to change the lock back to the original lock. The letter states that should this not be completed by the deadline a One Month Notice would be served. The letter also references section 12 of the tenancy agreement regarding not changing the locks without authorization and section 7 of the tenancy agreement addendum that states that the rental unit is for single occupancy only. The Landlord submitted both the tenancy agreement and the tenancy agreement addendum into evidence.

The Landlord stated that as the lock had not been changed back to the original lock by November 23, 2018, they served the One Month Notice on November 27, 2018. The Landlord stated that the Tenant came to the office to talk to them about cancelling the One Month Notice. However, as the lock had not been changed, the Landlord advised the Tenant that she had not complied with their warning letter and therefore they were not in agreement with cancelling the notice. However, the Landlord stated that they would check with the owner. While waiting to hear back from the owner, the Landlord testified that they advised the Tenant to file to dispute the notice and provided her with contact information for the Residential Tenancy Branch.

The Tenant stated that she received the One Month Notice on November 27, 2018. She provided testimony that she lost her key and wallet at the beginning of November 2018 and was concerned regarding safety of her rental unit given that the key was lost with her wallet which contained the address of the rental unit.

The Tenant testified that she contacted the building manager numerous time to notify him and have the locks changed. However, as she did not hear back she changed the locks herself. She also stated that she went to the property management office and was told to contact the building manager, even though he had not been getting back to her.

The Tenant stated that she received the warning letter regarding changing the locks and stated that she was provided the option of getting a new key for \$10.00 or changing the locks for \$150.00. She stated that she wanted to change the locks for safety but was not able to afford the cost at the time and was told that the Landlord was not willing to wait until the following month.

The Tenant testified that her boyfriend visits her at the rental unit but does not reside there. She stated that he has his own place for which he pays rent. She testified that she understands it is a single occupancy room and has not breached that agreement.

The Landlord testified that the Tenant did not contact their office regarding the issue with the missing key or permission to change the locks. They stated that their contact information is posted in the building and had the Tenant not heard back from the property manager, she could have contacted someone else. They stated that they became aware on January 22, 2019 that the Tenant had returned the locks to the original, although this was past the date requested in their warning letter.

The Tenant applied outside of the 10-day timeframe to dispute the One Month Notice. She provided testimony that she has mental health issues that led to difficulties in filing the dispute in time. She also stated that she recently lost two family members and had also been trying a new medication which caused a serious reaction. The Tenant submitted a prescription dated January 7, 2019 which she stated as proof that she is now on a new medication.

The Tenant submitted a written timeline of events that occurred regarding the lock and communication with the Landlord. The written submission states that on December 9, 2018 she was told by the Landlord that the One Month Notice would not be cancelled.

The Tenant also submitted a written statement dated December 28, 2018 and another undated written submission in which she stated that she was aware of the 10-day deadline to dispute the notice but was trying to reach an agreement with the Landlord before then. The written statement also notes that the Tenant has tried to find new housing options and she submitted a screen shot from her email showing that she has been emailing people regarding rental options. The Tenant submitted that the lock issue was resolved on December 6, 2018 when she returned the lock to the original.

The written submissions also note that the Tenant was not aware she was not able to change the locks. The Tenant stated that as the locks have been returned to the original she is no longer in breach of the tenancy agreement. The written submissions also state that the Tenant was late in filing the dispute due to the unfair communication by the Landlord, as well as the stress of two losses in her family during a short period of time.

The Tenant stated that she put the original lock back on the rental unit on December 6, 2018. She has a key for this lock but is still concerned as this is the lock for which a key was lost with her wallet. The Tenant applied for authorization to change the locks so that she has a lock which does not match with the missing key.

The Landlord stated that the Tenant told the property manager that she found the missing key a few weeks ago and further stated that as the Tenant has a working key, that is likely the missing key as there was only one key provided. The Landlord submitted a letter dated January 22, 2019 from the building manager which states that the Tenant advised him that the missing key was found 2 weeks prior. The letter also notes that the lock to the rental unit now works. The Landlord stated that they are aware that the lock is back to the original but stated that they are still seeking an Order of Possession based on the One Month Notice.

The Landlord has also applied for unpaid rent for January 2019 in the amount of \$690.00 and stated that February 2019 rent has also not been paid. The Landlord testified that the Tenant came to pay the January 2019 rent, but they did not accept it as they did not want to reinstate the tenancy. They stated that they also received a cheque for February 2019 rent which they did not deposit. The Tenant agreed that she attempted to pay rent for January and February 2019 and that the payments were not accepted by the Landlord.

### Analysis

As stated in Section 47(4) of the *Act*, a tenant has 10 days to dispute a One Month Notice. The Tenant received the One Month Notice on November 27, 2018 and filed an Application for Dispute Resolution on December 28, 2018.

However, as the Tenant applied for more time to dispute the One Month Notice, I refer to Section 66(1) of the *Act* which states that time limits may be extended only in exceptional circumstances. *Residential Tenancy Policy Guideline 36: Extending a Time Period* provides further explanation of 'exceptional circumstances' as follows:

*The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.*

The Tenant provided written statements and verbal testimony regarding why she was not able to apply within the timeframe provided under the *Act*. She also submitted a prescription from January 2019. The Tenant testified as to poor communication from the Landlord as well as mental health issues and personal circumstances that made it difficult to apply in time.

However, I do not find sufficient evidence to support the Tenant's testimony and to establish that there were exceptional circumstances that prevented her from applying in time. In the Tenant's own written submissions, she states that she was aware of the 10-day timeframe and also that she was told on December 9, 2018 that the One Month Notice would not be cancelled or extended. However, the Tenant did not file her application until December 28, 2018.

As the Tenant has applied for an extension of time, she has the burden of proof to prove, on a balance of probabilities, that there were *exceptional* circumstances that prevented her from applying on time. In the absence of sufficient documentary evidence that would establish that exceptional circumstances were in place after receipt of the One Month Notice, I do not find that the Tenant has met the burden of proof and therefore I decline to extend the 10-day timeframe stated in Section 47(4) of the *Act*.

As such, I find that Section 47(5)(a) applies:

(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.

The Tenant's application to cancel the One Month Notice is dismissed and she is conclusively presumed to have accepted that the tenancy ends in accordance with Section 47(5) of the *Act*.

Upon review of the One Month Notice I find that it complies with Section 52 of the *Act* and therefore, pursuant to Section 55(1), award the Landlord an Order of Possession dated February 28, 2018 at 1:00 pm.

The parties were in agreement that the Tenant attempted to pay rent for January and February 2019 and that the Landlord refused payment due to the dispute resolution proceeding and the One Month Notice in effect. The Landlord should not have refused rent payment as the Tenant was meeting her responsibilities under Section 26 of the *Act* to pay rent when it is due as per the tenancy agreement.

Despite a notice to end tenancy being in dispute, or an upcoming dispute resolution proceeding, while a tenant is residing in the rental unit they are responsible for paying the monthly rent in accordance with the *Act*. However, although the Landlord could have accepted the rent for use and occupancy only, I do find that the Landlord is owed the rent as due on the first day of each month. Therefore, pursuant to Section 67 of the *Act*, I find that the Landlord is entitled to \$690.00 each month for January and February 2019 for a total of \$1,380.00.

As the Landlord was successful in their application, I award the recovery of the filing fee in the amount of \$100.00, pursuant to Section 72 of the *Act*. The Landlord is granted a Monetary Order in the amount of \$1,480.00.

The Tenant applied for authorization to change the locks due to losing a key from the current lock lost and therefore being concerned for the safety of the rental unit. However, I decline to provide authorization for the locks to be changed. The Tenant confirmed that she had a key to the current lock and the Landlord confirmed that the original lock had been placed back on the door to the rental unit and provided evidence

that the Tenant may have found the lost key. The Tenant's application is dismissed, without leave to reapply.

### Conclusion

The Tenant's Application for Dispute Resolution is dismissed, without leave to reapply.

Pursuant to Section 55 of the *Act*, I grant an Order of Possession to the Landlord effective on **February 28, 2019 at 1:00 pm**. This Order must be served 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.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a **Monetary Order** in the amount of **\$1,480.00** for rent owed for January and February 2019 as well as the recovery of the filing fee paid for the application. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 08, 2019

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Residential Tenancy Branch