



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, CNL – 4M, DRI

### Introduction

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

- cancelation of a rent increase;
- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the "**One Month Notice**") pursuant to section 47; and
- cancellation of the landlord's Four Month Notice to End Tenancy for Demolition, Renovation, Repair, or Conversion of Rental Unit (the "**Four Month Notice**") pursuant to section 49.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenants testified that the landlord was served the notice of dispute resolution and supporting evidence via registered mail on January 29, 2019. They provided a Canada Post Tracking number which is reproduced on the cover of this decision. The landlord confirmed receipt of the notice of dispute resolution package. I find that the landlord was deemed served with this package on February 3, 2019, five days after the tenant mailed it, in accordance with sections 89 and 90 of the Act.

The landlord testified that he neither served the tenants with any documentary evidence, nor provided any documentary evidence to the Residential Tenancy Branch.

### Issue(s) to be Decided

Are the tenants entitled to the cancellation of:

- a rent increase;
- the One Month Notice; and

- the Four Month Notice?

### Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' evidence and my findings are set out below.

Sometime in April 2018 the parties entered into an oral tenancy agreement whereby the tenants would rent a single-detached home located on the lower part of the landlord's property (the "**Rental Property**") from the landlord (the landlord occupied a house further up the property). The landlord did not require a security deposit or pet damage deposit. The parties agree that there was no fixed term for the tenancy, but that their intentions were for it to be for "some time". The parties also agree that the tenants were to make some improvements to the Rental Property, the specifics of which are in dispute. The parties disagree on the amount of monthly rent.

The tenants testify that the monthly rent was to be \$750.00, payable on the first of the month. Additionally, they testify that the improvements they were to make to the Rental Property related to the structure of the house itself, and did not include the water system. They testified the tenancy began on May 15, 2018.

The landlord testified that monthly rent was to be \$1,000.00 payable on the first of the month, and that, for the first six months, the tenants were entitled to a \$250.00 reduction in monthly rent. The basis for this reduction, the landlord testified, was that it was within this time the tenants were to have completed the improvements to the Rental Property, which included installing a pump to provide the Rental Property with water (up until that point, the Rental Property would use the landlord's house pump to fill their cistern with water). He testified that the tenants moved in some point in May 2018 before May 15, but could not specify a date.

On January 8, 2019, the landlord posted both the One Month Notice and the Four Month Notice on the front door of the Rental Property.

The One Month Notice did not specify a date upon which the tenants must move out (the "**Effective Date**"). The grounds to end the tenancy cited in that One Month Notice were:

- the tenant is repeated late paying rent;
- the tenant has allowed an unreasonable number of occupants in the unit/site;

- the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- 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; and
- tenant has assigned or sublet the rental unit/site without landlord's written consent.

On the One Month Notice the landlord provided additional details of the cause leading to the issuance of the One Month Notice as:

- non-compliance in regards to handshake agreement
- non-compliance in regards to other end tenancy notice's [sic]
- withholding rent

The Four Month Notice had an effective end of tenancy date of April 1, 2019. It set out the reasons for ending the tenancy as:

- demolish the rental unit
- perform renovation or repairs that are so extensive that the rental unit must be vacant; and
- convert the rental unit for use by a caretaker, manager, or superintendent of the residential property.

Beside each of these points, the landlord wrote "maybe". The landlord testified that he was not sure which of these options he would do, as he would need to wait for the tenants to vacate the Rental Property.

On the Four Month Notice, the landlord wrote that he planned to do the following work:

- roof;
- mud room (build);
- water (redrill);
- subfloor;
- flooring;
- windows;
- insulation;
- drywall; and

- fence yard.

He indicated on the Four Month Notice that no permits are required to do this work. The landlord did not submit into evidence in support of this (such as a letter from his municipality).

The landlord testified that, every month of the tenancy, including December 2018, the tenants were three to four days late in paying their rent. He testified that, at one point, the tenants attempted to arrange paying the rent on a bi-monthly basis, but he refused, because he did not want to be disappointed twice a month by receiving the rent late.

The tenants at first denied they were late paying rent, but then testified that most months, they paid the rent within the first two or three days of the month.

The tenants testified that they paid cash every month, and that the landlord did not provide them with receipts.

The tenants testified that in late November 2018, the landlord came to the Rental Property and advised them that monthly rent would be increasing from \$750.00 to \$1,000.00. They testified that this was the first they had ever heard of a rent increase. The landlord agreed that he visited the Rental Property in late November 2018 (or early December 2018) to tell the tenants about the elimination of the \$250.00 rent reduction, but testified that this had been discuss with the tenants prior to their entering into the tenancy agreement.

In addition to the evidence above, the parties gave a great deal of contradictory evidence on a number of matters (for example, the number of pets permitted, landlord's access to the Rental Property, allegations of physical assault) that was not necessary to my determining the whether or not to grant the relief sought by the tenants.

## **Analysis**

### **One Month Notice**

Residential Tenancy Policy Guideline 38 states:

Three late payments are the minimum number sufficient to justify a notice under these provisions.

It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments. 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.

A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.

[...]

Whether the landlord was inconvenienced or suffered damage as the result of any of the late payments is not a relevant factor in the operation of this provision.

Section 26 of the Act states:

**Rules about payment and non-payment of rent**

26(1) 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.

[emphasis added]

Per section 26 of the Act, and Policy Guideline 38, the tenant is obligated to pay on time. On the tenants’ own testimony I find that they failed to comply with section 26 of the Act, as they testified they would paid monthly rent (which the agreed was due on the first of each month) within the first two or three days of the month. This amounts to a late payment of rent.

The landlord alleges that the tenants were three to four days late in paying their rent every month. The tenants testified that they two to three days late paying their rent most months.

As noted above in Policy Guideline 38, the duration of lateness of rent is not a relevant to whether the issuance of the One Month Notice for repeated late payment of rent is valid. Rent is either on time or it is late.

What is relevant is the number of time that the tenants were late in paying rent, and whether the landlord took timely action following the most recent late payment. The parties agree that the tenancy started at some point in May 2018, some nine months prior to the landlord serving the One Month Notice.

In this case, the tenants have admitted that they were late in paying rent “most months”. I find that “most months” means at least the majority of the months (that is, five months), which is greater than the three months needed to meet the requirement set out in Policy Guideline 38.

The tenant did not specify which months they were late in making payments. They did not deny that they were late in paying the monthly rent of December 2018 (something the landlord explicitly asserted). As the landlord’s evidence on this point is uncontroverted, I accept his evidence, and find that the tenants were late in paying the monthly rent for December 2018. I find that the landlord acted in a timely fashion by issuing the One Month Notice on January 8, 2019.

I find that the One Month Notice was validly issued on the basis that the tenants were repeated late in paying their rent, and I dismiss the tenant’s application to cancel the One Month Notice.

As such, it is unnecessary for me to consider the other reasons for termination of the tenancy listed on the One Month Notice.

#### Effective Date of the One Month Notice

The One Month Notice does not include an Effective Date.

Section 52 of the Act requires that a One Month Notice include an Effective Date in order to be valid. However, section 68 of the Act states:

#### **Director's orders: notice to end tenancy**

68(1) If a notice to end a tenancy does not comply with section 52 [*form and content of notice to end tenancy*], the director may amend the notice if satisfied that

- (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and
- (b) in the circumstances, it is reasonable to amend the notice.

The One Month Notice was served on the tenants at the same time as the Four Month Notice, which listed an Effective Date of April 1, 2019. Based on this, I find that the tenants knew or ought to have known that the date by which the landlord wanted the tenants to vacate the Rental Property was no later than April 1, 2019. As the landlord did not specify a date on the One Month Notice, I find it reasonable to amend the One Month Notice to include an Effective Date of April 1, 2019.

Section 55 of the Act states:

**Order of possession for the landlord**

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As I have dismissed the tenant's application, and I have amended the One Month Notice so that it complies with section 52, I find that the landlord is entitled to an order of possession effective 1:00pm on April 1, 2019.

I note that this does not relieve the tenants of their obligation to pay monthly rent for the month of March, 2019. They are required to pay their monthly rent until such time as they vacate the property in accordance with the Act.

Rent Increase

The landlord alleges that the tenancy agreement contained a term whereby monthly rent was \$1,000.00, and the tenants would receive a reduction of rent in the amount of \$250.00 for the first six months of the tenancy. The tenants deny this and allege that the monthly rent was always to be \$750.00.

I find that the alleged the term of the agreement providing the tenant with a "reduction" of \$250.00/month for the first six months of the tenancy is, in substance, a method by which the landlord sought to *increase* the rent after six months.

Such an arrangement may be permissible under the Act, as section 43 states:

**Amount of rent increase**

43(1) A landlord may impose a rent increase only up to the amount  
[...]  
(c) agreed to by the tenant in writing.

As such, if the landlord wanted to make such an arrangement with the tenants, it must have been made in writing (included as a term of a written lease, for example). He did not do this. Therefore, the increase in the monthly rent (or the removal of the reduction of the monthly rent) is not made in accordance with the Act.

Accordingly, I find that the monthly rent of the Rental Property is \$750.00.

**Conclusion**

I find that the monthly rent payable by the tenants is \$750.00.

I dismiss the tenants' application to cancel the One Month Notice without leave to reapply.

I grant an order of Possession to the landlord effective 1:00 pm on April 1, 2019. Should the tenants fail to comply with this order, this Order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

The tenants' application to cancel the Four Month Notice is dismissed without leave to reapply.

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 25, 2019

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Residential Tenancy Branch