



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            CNC, MNDCT, OLC FFT

### Introduction

This hearing dealt with the tenants' Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act") to cancel a 1 Month Notice to End Tenancy for Cause dated March 29, 2019 ("1 Month Notice"), for a monetary claim for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee.

The tenant DH ("tenant"), the landlord, and a support person for the landlord SS ("support") attended the teleconference hearing. The hearing process was explained to the parties and an opportunity to ask questions was provided to the parties at the start of the hearing. I have considered only the documentary evidence that was served in accordance with the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"). In addition, only evidence relevant to the issues and my findings below have been described in this decision.

Neither party raised any concerns regarding the service of documentary evidence.

### Preliminary and Procedural Matters

At the outset of the hearing, the parties consented to correct the surname of the tenant DH and the rental unit address, which was done pursuant to section 64(3) of the *Act*.

Rule 2.3 of the RTB Rules authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenants indicated several matters of dispute on the application, the most urgent of which is the application to cancel the 1 Month Notice. I find that not all the claims on the application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenants' request to cancel the 1 Month Notice and the cost of the filing fee at this proceeding. The balance of the tenants' application is dismissed, with leave to re-apply.

In addition, the tenant confirmed their email address at the outset of the hearing. The landlord confirmed that they do not have an email address. The parties were advised that the decision would be emailed to the tenants and sent by regular mail to the landlord. In addition, if the landlord is entitled to an order of possession, that will be sent by regular mail to the landlord with the decision, for service on the tenants.

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on December 12, 2017. The parties agreed that monthly rent is currently \$900.00 per month and is due on the first day of each month. The tenants paid a security deposit of \$750.00 (half of the original monthly rent of \$1,500.00, which was later reduced by agreement of the parties) at the start of the tenancy, which the landlord continues to hold.

The tenant confirmed receiving the 1 Month Notice on April 1, 2019. The tenants disputed the 1 Month Notice within the required 10 day timeline under section 47 of the *Act* by filing to dispute the 1 Month Notice on April 9, 2019. The 1 Month Notice states the cause as repeated late payment of rent.

The tenant confirmed three late payments of rent during the hearing as follows:

1. December 2018 rent paid on either January 21 or 22, 2019.
2. January 2019 rent paid on either January 21 or 22, 2019.
3. May 2019 rent paid on May 7, 2019, which is the date the landlord received the tenants' rent cheque for May 2019, and May 3, 2019, the date in which the tenants claim to have mailed the rent cheque for May 2019.

What is at issue given that the 1 Month Notice was served on March 29, 2019, is an alleged late payment of rent for August 2018. The landlord testified that the female tenant advised him by phone on July 31, 2018, not to deposit the rent cheque for August 1, 2018 until August 7, 2018, which the landlord agreed to do in August 2018. The tenant testified that he was working across the province at the time and does not recall advising the landlord of such and that he had a conversation with his female co-tenant and she denied calling the landlord to advise him not to cash the August 2018 rent cheque until August 7, 2018. The tenant confirmed that the female tenant was not available to provide direct witness testimony and did not submit a signed letter to deny that the August 2018 rent payment was asked to be deposited on August 7, 2018, yet the Details of Cause section the landlord indicates the three late payment dates described above.

The tenants continue to occupy the rental unit. The landlord is seeking an order of possession and does not wish for the tenancy to continue. The parties agreed that money for use and occupancy has been paid to the landlord by the tenants for May 2019.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

**1 Month Notice** – The landlord issued a 1 Month Notice dated March 29, 2019, which the tenant confirmed receiving as of April 1, 2019. Although the tenants disputed the 1 Month Notice on time by filing an application on April 9, 2019, I accept the landlord's testimony over that of the tenant's testimony for the following reasons. The tenants did not present any testimony from the female tenant to deny that she called the landlord in August 2018 to delay cashing the rent cheque until August 7, 2018. Furthermore, the tenant admitted to paying rent late after the 1 Month Notice was served. Therefore, I am satisfied that the landlord has met the burden of proof that the tenants have paid rent late on at least 3 occasions in the last 18 months. RTB Policy Guideline #38 – Repeated Late Payment of Rent states that three late payments of rent are the minimum number to sufficiently justify a notice under these provisions.

I am satisfied that the landlord has provided sufficient evidence to support that the 1 Month Notice is valid as a result of the above. Therefore, I dismiss the portion of the tenants' application that was not severed as indicated above, without leave to reapply.

I find the tenancy ended on April 30, 2019.

Section 55 of the *Act* applies and 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.**

[Emphasis added]

Pursuant to section 55 of the *Act*, and taking into account that I find the 1 Month Notice complies with section 52 of the *Act*, I must grant the landlord an order of possession once I have dismissed the tenants' application to dispute the 1 Month Notice or have upheld the 1 Month Notice. Therefore, I grant the landlord an order of possession for unpaid rent **effective May 31, 2019 at 1:00 p.m.** I have used this date as the landlord confirmed that the tenants have paid for use and occupancy for the month of May 2019.

I do not grant the filing fee as the tenants' application has been dismissed.

Conclusion

The tenants' application that was not severed as indicated above is dismissed without leave to reapply, due to insufficient evidence.

The 1 Month Notice is upheld and the tenancy ended on April 30, 2019.

The landlord has been granted an order of possession effective May 31, 2019 at 1:00 p.m. The landlord must serve this order on the tenants. The order may be enforced in the Supreme Court of British Columbia once it is served and the effective date has passed.

The decision and order of possession will be sent by regular mail to the landlord. The decision will be sent by email to the tenants.

The filing fee is not granted.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: May 24, 2019

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Residential Tenancy Branch