



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OLC, FFL

### Introduction

On April 9, 2019, the Tenants 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 an Order for the Landlord to comply pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing with J.A. appearing as her advocate. The Landlord attended the hearing as well. All in attendance provided a solemn affirmation.

The Tenant advised that she served the Landlord with the Notice of Hearing package and evidence by registered mail on April 11, 2019 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 advised that he served the Tenants with his evidence by posting it on the Tenants’ door on May 3, 2019 and that Tenant K.H. opened the door and took this package. Tenant P.L. advised that she did not receive this package; however, she did not have any compelling evidence to refute this testimony, nor was Tenant K.H. present to speak to this. Based on the Landlord’s affirmed testimony, I am satisfied that the Landlord more likely than not served this evidence and that Tenant K.H. received it. In addition, as service of this evidence complies with the time frame requirements of Rule 3.15 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering my 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 issues related to the Landlord's Notice, and the other claims were dismissed. The Tenants are 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

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

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord advised that a tenancy agreement was signed between the parties commencing December 15, 2018 and rent was established at \$1,000.00 per month, due on the first day of each month. A security deposit of \$400.00 was also transferred from the previous tenancy agreement. He cited the tenancy agreement that was submitted as documentary evidence to support his position that a new agreement was signed by all parties on December 15, 2018.

The Tenant acknowledged that she signed this tenancy agreement in December 2018; however, she then recanted her statement and advised that the document she actually signed was some unknown document that the Landlord presented that was related to his mortgage.

When weighing the Landlord and Tenant testimony with respect to this issue, the Tenant's submission that she received and signed a document related to the Landlord's mortgage does not make sense to me as it is not clear why this would have been necessary. Based on the Tenant's uncertainty about what she signed, and given that a tenancy agreement was submitted into evidence with signatures of both Tenants, I find it more likely than not, based on a balance of probabilities, that the Tenants did in fact sign this tenancy agreement and agree to the terms of the tenancy.

The Landlord stated that he served the Notice to the Tenants by posting it to their door on April 3, 2019 and the Tenant confirmed that she received this. The reason the Landlord served the Notice is because the "Tenant is repeatedly late paying rent."

All parties agreed that Tenant K.H. paid a portion of the rent each month by cheque, issued by the Public Guardian and Trustee and that these cheques were issued before the rent was due on the first of each month. As well, all parties agreed that Tenant P.L. paid the balance of the rent owed by cash.

The Landlord cited copies of cheques submitted as documentary evidence dated February 24, 2019, March 24, 2019, and April 24, 2019 for partial rental payments by Tenant K.H. He also referenced receipts submitted as documentary evidence dated January 3, 2019, February 4, 2019, March 5, 2019 and April 3, 2019 to support his position that Tenant P.L. paid the balance of the rent late for these months.

The Tenant advised that she gets paid in the middle of the month and that she either pays rent to the Landlord in the middle of each month prior to when rent is due or sometimes on the first of each month when rent is due.

### 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 Tenants are 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 Tenants to pay all of the rent by the first of each month. While it is Tenant P.L.'s position that she pays the balance of the rent on the first of each month, I do not find that her statements supporting this were compelling, nor do they outweigh the Landlord's documentary evidence of multiple late payments of rent. Based on a balance of probabilities, I am satisfied that the Landlord's evidence is a more accurate portrayal of this scenario. Consequently, I am satisfied that there is a more likely than not a pattern of multiple late payments of rent throughout the months leading up to the issuance of the Notice.

Consequently, 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*. As such, the Order of Possession takes effect at **1:00 PM on May 31, 2019**.

As the Tenants have been unsuccessful in their claim, I find that the Tenants are not entitled to recover the \$100.00 filing fee paid for this Application.

### Conclusion

I dismiss the Tenants' Application and uphold the Notice. I grant an Order of Possession to the Landlord effective at **1:00 PM on May 31, 2019 after service of this Order** on the Tenants. Should the Tenants 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: May 17, 2019

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Residential Tenancy Branch