



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding METRO VANCOUVER HOUSING CORPORATION and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC, FFL

### Introduction

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

- an Order of Possession based on the 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

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.

As Tenant HC (the tenant) confirmed that the tenants received the 1 Month Notice posted on their door by the landlord on March 6, 2019, I find that the tenants were duly served with this Notice in accordance with section 88 of the *Act*. As the tenant confirmed that both tenants received a copy of the landlord's dispute resolution hearing package sent by registered mail on April 23, 2019, I find that the tenants were duly served with this package in accordance with section 89 of the *Act*. Since the tenant also confirmed receipt of the landlord's written evidence, I find that this material was duly served to the tenants in accordance with section 88 of the *Act*. Although the tenants submitted written evidence to the Residential Tenancy Branch, the tenant said that they did not provide copies of this written evidence to the landlord. I advised the parties that I could not consider the tenants' written evidence as it had not been served to the landlord.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for cause based on the 1 Month Notice? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The landlord provided copies of the Residential Tenancy Agreement signed by the parties on October 27 and 30, 2014 for this tenancy for a rent geared to income rental unit. The tenants commenced living in the rental unit on September 1, 2014. The landlord gave undisputed sworn testimony that the current monthly rent is set at \$1,509.00, payable in advance on the first of each month. The landlord continues to hold the tenants' \$625.00 security deposit paid in September 2014.

The landlord entered into written evidence a copy of the 1 Month Notice requiring the tenants to end this tenancy by April 30, 2019. In that Notice, the landlord cited the following reasons for the issuance of the Notice:

*Tenant is repeatedly late paying rent.*

*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 entered into written evidence a copy of the tenant ledger, which showed that the tenants had paid rent late on every month, but November 2018, since September 2018. At the hearing, the landlord gave undisputed sworn testimony that there is \$4,586.00 in rent owing at this time for this tenancy for the months of April, May and June 2019.

The tenant did not dispute the landlord's claim that there has been a long history of late payment of rent and that rent has not been paid for the past three months. The tenant testified that a series of setbacks have prevented the tenants from paying their rent on time. The tenant said that they are expecting to receive funds from family shortly and was hoping for an extension of time to enable their family to remain in this rental unit for at least the current month.

The landlord said that the tenant has promised payments many times in the past and had not followed through on these commitments. The landlord asked for the issuance of an immediate Order of Possession based on the tenants' lengthy history of late payments of rent.

### Analysis

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 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. I find that the tenants have failed to file any application for dispute resolution within the ten days of service granted under section 47(4) of the *Act*. Accordingly, I find that the tenants are conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 1 Month Notice, April 30, 2019.

In addition, I note the wording of RTB Policy Guideline #38, which 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...*

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." There is no dispute that the tenancy agreement requires the tenants to pay all of the rent by the first of each month. The landlord has provided convincing evidence that the tenants have been late in paying their rent for six of the seven months immediately preceding the landlord's issuance of the 1 Month

Notice. I am fully satisfied that there is a pattern of late payment of rent throughout the months leading up to the landlord's issuance of this 1 Month Notice.

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*]. Section 52 of the *Act* reads in part as follows:

*In order to be effective, a notice to end tenancy must be in writing and must...*

- (a) be signed and dated by the landlord or tenant giving the notice,*
- (b) give the address of the rental unit,*
- (c) state the effective date of the notice,*
- (d) except for a notice under section 45(1) or (2) [tenant's notice], state the grounds for ending the tenancy, and*
- (e) when given by a landlord, be in the approved form.*

I find 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(s). If the tenant(s) do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Since the landlord has been successful in this application, I allow the landlord's application to recover the \$100.00 filing fee for this application from the tenants.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I allow the landlord to recover the filing fee from the tenants by ordering the landlord to retain \$100.00 from the tenants' security deposit. The value of the tenants' security deposit is hereby reduced from \$625.00 to \$525.00.

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: June 03, 2019

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Residential Tenancy Branch