



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MARY ABALLINI  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, FF

### Preliminary matter

The Tenants application was amended to include the re-issued 1 Month Notice to End Tenancy for Cause dated October 2, 2019 as it was served on October 12, 2019 with a correction made to the male Tenant's name.

### Introduction

This matter dealt with an application by the Tenants to cancel a 1 Month Notice to End Tenancy for Cause and to recover the filing fee for this proceeding.

The Tenants said they served the Landlord with the Application and Notice of Hearing (the "hearing package") by personal delivery on October 14, 2019. Based on the evidence of the Tenants, I find that the Landlord was served with the Tenants' hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

### Issues(s) to be Decided

1. Are the Tenants entitled to an order to cancel the 1 Month Notice to End Tenancy for Cause?

### Background and Evidence

The female Tenant has lived in the rental unit since January 2008 and this tenancy with both the female and male Tenant started in July 2019. The tenancy is a verbal month to month tenancy. Rent is \$1,281.25 per month payable on the 1<sup>st</sup> day of each month. The female Tenant paid a security deposit of \$625.00 in June 2018.

The Landlord said she served the Tenants with a 1 Month Notice to End Tenancy for Cause dated October 2, 2019 in person and then again with a correction on the Notice in person on October 12, 2019. The Effective Vacancy date on the Notice is November 2, 2019. The Tenants are living in the unit and the Landlord requested an Order of Possession if the Tenants' application is unsuccessful.

The Landlord continued to say that the Tenants have a number of late rent payments which are a breach of a material term of the tenancy agreement. The Landlord continued to say the Tenants' rent payments were late January 2018, September, 2019 and the October and November 2019 rent payments have not been made.

The Landlord continued to say the late rent payments are the one of the reasons for the Notice to End Tenancy. The other issues are that the Tenants have significantly disturbed other occupants and have caused extraordinary damage to the rental unit.

The Tenants said that they agreed that their rent payments were late in January 2018, September 2019 and the October and November 2019 rent payments have not been made. The male Tenant said their ministry cheque was stolen and cashed for October 2019 and he has not received the November 2019 ministry cheque as of yet. The male Tenant said that is why they have not paid the rent for October and November, 2019. The female Tenant said they asked the Landlord if they could pay their rent late and the Landlord said no the rent was due and the Tenants must pay it.

The Tenants asked the Landlord if they paid the unpaid rent today can the tenancy continue.

The Landlord said "no" they do not want to continue the tenancy for a number of reasons as listed on the 1 Month Notice to End Tenancy for Cause.

The Male Tenant said in closing they want to appeal a decision to end the tenancy and they will not move out of the rental unit if served an Order of Possession.

The Landlord said in closing they are declining the Tenants' offer to continue the tenancy and they would like to end the tenancy as soon as possible.

## Analysis

For a 1 Month Notice to End Tenancy for Cause to be successful a Landlord must prove at least one reason listed on page two of the Notice. For a Tenant to cancel a 1 Month Notice to End Tenancy for Cause a Tenant must establish grounds to disprove all the reasons on page 2 of the Notice.

**Section 26 of the Act says:** (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.

As well: **Section 47 of the Act says:** a landlord may end a tenancy by giving notice to end tenancy if one or more of the following:

**(b) the tenant is repeatedly late paying the rent**

(d) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

(f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;

### **Policy guideline 38**

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.

The Tenants do not have the right to withhold all or a portion of the rent from the Landlord when it is due and the Tenants have been late with the rent payment for September, October and November 2019. Repeated late payments of rent that are not corrected after receiving a request to pay the rent on time is a material breach of the tenancy agreement. The tenants have not provided evidence or testimony that establishes grounds to justify the late rent payments. The Tenants testified that the Ministry cheques were stolen, but the Tenants did not provide any corroborative evidence to support this claim. Further the female Tenant testified the Landlord did not agree to late rent payments and requested the rent be paid. I find the Tenants have not established grounds to prove the late payments and unpaid rent are justified. The Landlord's 1 Month Notice to End Tenancy for Cause dated October 2, 2019 stands in effect. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect November 30, 2019, after service of it on the Tenant. The effective vacancy date on the 1 Month Notice to End Tenancy for Cause dated October 2, 2019 has been corrected pursuant to section 53 of the Act from November 2, 2019 to November 30, 2019. Any Notice dated in October 2019 has an effective vacancy date of November 30, 2019.

As the Tenants were not successful in this matter I order the Tenants to bear the cost of the filing fee of \$100.00 that they have already paid.

### Conclusion

The Tenant's application to cancel the 1 Month Notice to End Tenancy for Cause dated October 2, 2019 is dismissed without leave to reapply.

An Order of Possession effective November 30, 2019, after service of it on the Tenants has been issued to the Landlord. A copy of the Order must be served on the Tenants in accordance with the Act: the Order of Possession and may be enforced in 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: November 12, 2019

Correction December 2, 2019

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Residential Tenancy Branch