



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

CNC FFT RP RR

### **Introduction**

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

- Cancellation of a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47;
- Authorization to recover the filing fee from the landlord pursuant to section 72;
- An order that the landlord make repairs to the rental unit pursuant to section 33; and
- Authorization to reduce rent pursuant to section 65.

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

As both parties were present service was confirmed. The parties each testified that they were in receipt of the other's materials. Based on the testimonies I find that the parties were each served with the respective materials in accordance with sections 88 and 89 of the *Act*.

### **Preliminary Issue – Withdrawal of Application**

At the outset of the hearing the tenant sought to withdraw their application claiming they had vacated the rental unit. The landlord did not consent to the withdrawal and testified that the tenant has not vacated the rental property.

In accordance with Residential Tenancy Rule of Procedure 5.0.1 where a tenant has applied to dispute a landlord's notice to end tenancy, the applicant requires the consent of the landlord to withdraw their application. Accordingly, as the landlord does not

consent to the withdrawal of the application, and I find that it would be prejudicial to the landlord's rights to allow the withdrawal, I decline the tenant's request.

### Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Is the tenant entitled to any of the other relief sought?

### Background and Evidence

This periodic tenancy began in July 2019. The monthly rent is \$1,300.00 payable on the 3<sup>rd</sup> of each month. The parties gave evidence that the tenant only made two payments throughout the duration of this tenancy on July 27, 2019 and August 12, 2019. The tenant testified that they were late paying rent for the months of July and August and have not made any rent payments for the remaining months of this tenancy nor do they intend to do so.

The landlord issued a 1 Month Notice dated September 9, 2019 stating the reason for this tenancy to end as the tenant has been repeatedly late paying rent.

### Analysis

Section 46 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. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter at hand the landlord must demonstrate that the tenant has been repeatedly late paying rent. Residential Tenancy Policy Guideline 38 provides that three late payments are the minimum number to justify a notice to end tenancy. I accept the parties' evidence that the tenant has been either late or have failed to pay rent for the entirety of this tenancy. Accordingly, I find that the landlord has shown on a balance that there is cause to end this tenancy and dismiss the tenant's application.

Section 55(1) of the *Act* reads as follows:

**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 an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

*(a) the landlord makes an oral request for an order of possession, and*

*(b) the director dismisses the tenant's application or upholds the landlord's notice.*

The landlord's 1 Month Notice meets the form and content requirements of section 52 of the *Act* as it is in the approved form and clearly identifies the parties, the address of the rental unit and the effective date of the notice. The notice provides the reasons for ending the tenancy, the repeated late payment of rent.

As I have dismissed the tenant's application to dispute the 1 Month Notice, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*. As the effective date has passed, I issue an Order of Possession effective 2 days after service.

As this tenancy is ending, and the tenant made no submissions on the other issues, I find it unnecessary to make a finding on the balance of the tenant's application and dismiss the remainder of the application.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

I grant an Order of Possession to the landlord effective **2 days after service on the tenant(s)**. Should the tenants or any occupant on the premises 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: November 26, 2019

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Residential Tenancy Branch