



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding INTRA PACIFIC BUILDINGS LTD.  
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* ("Act") for:

- an order of possession for cause, pursuant to section 55; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 26 minutes. The landlord's two agents, "landlord EC" and "landlord ES," attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Landlord EC stated that he was the senior property manager and landlord ES confirmed that she was the rental property manager. Both landlord agents confirmed that they had permission to represent the landlord company named in this application.

Landlord ES testified that the tenant was served with the landlord's application for dispute resolution hearing package on March 18, 2020, by way of registered mail to the tenant's rental unit address. The landlord provided a Canada Post receipt and landlord ES confirmed the tracking number verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on March 23, 2020, five days after its registered mailing.

Landlord ES confirmed that the tenant was served with the landlord's 1 Month Notice to End Tenancy for Cause, dated February 5, 2020 ("1 Month Notice"), on the same date by way of posting to the rental unit door and by registered mail to the rental unit address. The landlord provided a Canada Post receipt and landlord ES confirmed the tracking number verbally during the hearing. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 1 Month Notice on

February 8, 2020, three days after its posting and on February 10, 2020, five days after its registered mailing.

### Issues to be Decided

Is the landlord entitled to an Order of Possession for cause?

Is the landlord entitled to recover the filing fee for this application?

### Background and Evidence

While I have turned my mind to the landlord's documentary evidence and the testimony of the landlord's two agents, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

Landlord ES testified regarding the following facts. This tenancy began on May 1, 2007. Monthly rent in the current amount of \$986.02 is payable on the first day of each month. A security deposit of \$462.50 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties and a copy was provided for this hearing. The tenant continues to reside in the rental unit.

The landlord seeks an order of possession based on the 1 Month Notice. Landlord EC confirmed that the effective date on the notice is March 10, 2020. He stated that the notice was issued for the following two reasons:

- *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.*

Landlord ES said that the tenant was late paying rent five times during this tenancy in June, October and December 2018 and in January and February 2019. Landlord ES confirmed multiple notices to end tenancy were issued to the tenant, but she did not go through these notices during the hearing. She stated that a rent receipt was issued to the tenant for "use and occupancy only" on March 19, 2020, after the March 2020 rent was paid late. The landlord did not provide a copy of this receipt. Landlord EC explained that the tenant did not pay rent for April 2020 and that the tenant eventually pays his rent but is "habitually late."

Landlord EC confirmed that the tenant breached a material term of the addendum to the tenancy agreement. Landlord ES stated that the tenant was constantly smoking in the rental unit, she asked him to stop smoking, she was present and smelled the smoke, and she had two face-to-face conversations with the tenant about the smoking. She confirmed that there was a “no smoking” policy in the rental building, and that there was a fire in the building due to smoking, so the landlord wanted to ensure that no residents smoked inside.

## Analysis

### *Tenant is repeatedly late paying rent*

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement. Rent is due on the first day of each month, as per the written tenancy agreement.

Residential Tenancy Policy Guideline 11 discusses waiver, as noted below, in part:

*...A Notice to End Tenancy can be waived (i.e. withdrawn or abandoned), and a new or continuing tenancy created, only by the express or implied consent of both parties...*

*...*

*If the landlord accepts the rent for the period after the effective date of the Notice, the intention of the parties will be in issue. Intent can be established by evidence as to:*

- whether the receipt shows the money was received for use and occupation only.*
- whether the landlord specifically informed the tenant that the money would be for use and occupation only, and*
- the conduct of the parties.*

*There are two types of waiver: express waiver and implied waiver. Express waiver arises where there has been a voluntary, intentional relinquishment of a known right. Implied waiver arises where one party has pursued such a course of conduct with reference to the other party so as to show an intention to waive his or her rights. Implied waiver can also arise where the conduct of a party is inconsistent with any other honest intention than an intention of waiver, provided that the other party concerned has been induced by such conduct to act upon the belief that there has been a waiver, and has changed his or her position to his or*

*her detriment. To show implied waiver of a legal right, there must be a clear, unequivocal and decisive act of the party showing such purpose, or acts amount to an estoppel.*

I find that the landlord is attempting to raise issues with the tenant as far back as June 2018 and as recently as February 2019, which is one year to almost two years prior to the 1 Month Notice issued on February 5, 2020. I find that the landlord not pursuing an end to the tenancy, despite claiming to have issued multiple notices to end tenancy for unpaid rent, which were not reviewed by the landlord during this hearing, amounts to a waiver to issue a 1 Month Notice one to two years later. I find that the landlord continued the tenancy and the tenant relied on the landlord's implied waiver conduct in this regard.

Further, the landlord did not provide a copy of the receipt indicating "use and occupancy only" for the March 2020 rent, which was paid on March 19, 2020, after the effective date of the notice of March 10, 2020.

For the above reasons, and given the conduct of the parties, I find that the landlord waived its right to pursue an Order of Possession based on the 1 Month Notice. I find that the landlord continued this tenancy and the tenant relied on this conduct.

*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 did not provide a copy of the addendum to the tenancy agreement for this hearing, despite claiming that the tenant breached a material term of that addendum. No section number of this addendum was provided by the landlord during the hearing, to show what was breached.

Both landlord EC and landlord ES did not know what a "material term" was when asked multiple times during the hearing. They asked if my failure to receive the addendum was material.

Landlord EC referenced breach letters submitted to the tenant, but no dates were provided and none of the letters were reviewed during the hearing. Written notice is a requirement, as noted above.

Section 47 of the *Act* requires the landlord to issue a 1 Month Notice for a valid reason. I find that the landlord failed to issue the 1 Month Notice for a valid reason, as noted above.

On a balance of probabilities and for the reasons stated above, the landlord's application for an order of possession for cause is dismissed without leave to reapply. The landlord's 1 Month Notice, dated February 5, 2020, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

As the landlord was unsuccessful in this application, I find that it is not entitled to recover the \$100.00 filing fee from the tenant.

### Conclusion

The landlord's entire application is dismissed without leave to reapply.

The landlord's 1 Month Notice, dated February 5, 2020, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

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: April 20, 2020

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Residential Tenancy Branch