



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FFT, OPC, MNDL, MNRL

### Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant requested:

- cancellation of the landlords’ 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- authorization to recover the filing fee for this application, pursuant to section 72.

While the landlords attended the hearing by way of conference call, the tenants did not. I waited until 1:51 p.m. to enable the tenant to participate in this scheduled hearing for 1:30 p.m. The landlords were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Rule 7.3 of the Rules of Procedure provides as follows:

### **7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The landlords gave sworn testimony that on March 22, 2020 copies of the Application for Dispute Resolution hearing package ('Application') and evidence were sent to each tenant by registered mail. In accordance with sections 89 and 90 of the Act, I find that the tenants were deemed served with copies of the landlords' application and evidence on March 27, 2020, accordingly; the hearing proceeded and completed in the absence of the tenants.

### Preliminary issue

At the outset of the hearing the landlords advised that there is unpaid rent. The landlords advised that they are concerned as to when the tenants will leave as there is a delay in executing an order of possession due to COVID - 19. The landlords advised that as there are numerous unauthorized occupants in the unit and are concerned as to the condition of the unit and when it will be vacated. The landlords request to withdraw the monetary portion of this claim so that it can be dealt in one separate hearing for damages and unpaid rent. I agree with the landlords that it would be a more efficient and appropriate use of time to hear the monetary portion in a separate hearing, accordingly; I dismiss the landlord's monetary portion of their application with leave to reapply.

### Issues(s) to be Decided

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

### Background and Evidence

The landlords gave the following undisputed testimony. The tenancy began on January 1, 2019. Monthly rent is set at \$1950.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$975.00 security deposit. The landlords issued a One Month Notice to End Tenancy for Cause on February 21, 2020 and cited the following two reasons for seeking an end to this tenancy for cause.

*Tenant is repeatedly late paying rent.*

*Tenant or a person permitted on the property by the tenant has:*

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*

With respect to the first of these reasons, the landlord provided undisputed sworn testimony supported by written evidence that the tenant was late in paying the rent on five occasions over a twelve-month period. AR testified that even after serving a notice to the tenants for late rent, they have failed to pay the rent for April and have made no attempts to pay it resulting in six occasions of late rent since February 2019. Both landlords testified as to their concerns about the tenants taking on unauthorized occupants and the abusive, threatening behaviour of those occupants. The landlords advised that the police have attended on two occasions. The landlords seek an end to this tenancy and an order of possession.

### Analysis

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. Although the tenants filed an application to dispute the notice, they chose not to participate or submit any evidence for today's hearing.

### ***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;...*

*(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,...*

The landlord needs only demonstrate that one of the reasons identified in the 1 Month Notice is valid in order to end a tenancy for cause.

In this case, the landlord has submitted undisputed evidence that the tenant paid rent late on five occasions since July 2019; July 2019, November 2019, January 2020, February 2020 and April 2020.

Residential Tenancy Policy Guideline #38 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...*

There is clear evidence that the written tenancy agreement requires the tenants to pay all of the rent by the first of each month. The evidence presented indicates that the tenants have been late in paying their rent on at least three occasions and has still not paid their April 2020 rent. Section 26(1) of the *Act* requires rent to be paid when it is due. For these reasons, I am satisfied that there is a recurring pattern of late payment of rent during this tenancy and that the landlord had adequate grounds to issue the 1 Month Notice for the tenant's late payment of rent. As section 47 of the *Act* only requires that one of the reasons cited in a 1 Month Notice are valid, I have not considered the landlord's secondary reason for seeking an end to this tenancy.

Section 55 of the *Act* reads in part 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 to the landlord an order of possession of the rental unit if*

*(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*

*(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

I find that the landlord's 1 Month Notice was issued on the correct form and included all of the required information in order to comply with section 52 of the *Act* as to the form and content of that Notice. I dismiss the tenant's application to cancel the 1 Month Notice and issue the landlord an Order of Possession in accordance with section 55(1) of the *Act*.

### Conclusion

I dismiss the tenant's application to cancel the 1 Month Notice. The tenant's application is dismissed in its entirety without leave to reapply.

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia. The landlords monetary claim is dismissed with leave to reapply.

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 21, 2020

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Residential Tenancy Branch