



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OLC, FFT

### Introduction

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

- cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 9:41 a.m. in order to enable the tenants to call into this teleconference hearing scheduled for 9:30 a.m. The landlord and the landlord's agents, T.A. and C.C. (the "agents"), attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord, his agents and I were the only ones who had called into this teleconference.

I note that section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

### Issues to be Decided

1. Are the tenants entitled to cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47 of the *Act*?
2. Are the tenants entitled to an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62 of the *Act*?
3. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

### Background and Evidence

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

The landlord's agents provided the following undisputed testimony. This tenancy began on May 1, 2019 and is currently ongoing. Monthly rent in the amount of \$1,200.00 is payable on the first day of each month. A security deposit of \$600.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The agents testified that the tenants were served with a One Month Notice to End Tenancy for Cause on July 13, 2020, via registered mail. The agents provided the Canada Post tracking number during the hearing and it is located on the cover page of this decision. The One Month Notice states that the effective date of the notice is August 31, 2020.

The One Month Notice states the following reasons for ending the tenancy:

- 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;
  - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;

The agents testified that the tenants were late paying rent for January, February and March of 2020.

The agents testified that the tenants who lived above the tenant moved out of the subject rental property moved out because:

- the tenants smoked marijuana and it wafted into their unit constantly;
- the tenants acted aggressively to the upstairs tenants; and
- the tenants were extremely loud.

The landlord entered into evidence a letter from the upstairs tenants stating same. The agents testified that the subject rental property was a no smoking property. The tenancy agreement entered into evidence states same.

### Analysis

Rule 7 of the Residential Tenancy Branch Rules of Procedure provides in part as follows:

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. 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 tenants failed to attend this hearing. Pursuant to Rule 7 of the Residential Tenancy Branch Rules of Procedure, I dismiss the tenants' application without leave to reapply.

Section 55 of the *Act* states that 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:

- the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Upon review of the One Month Notice, I find that it meets the form and content requirements of section 52 of the *Act*. I find that the One Month Notice was served on the tenants in accordance with section 88 of the *Act*.

Section 47(1)(b) of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent.

Residential Policy Guideline 38 states that 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.

I accept the agents' undisputed testimony that the tenant was late paying rent for January, February and March 2020. I therefore dismiss the tenants' application without leave to reapply and uphold the landlord's One Month Notice.

Since I have dismissed the tenants' application and have found that the One Month Notice meets the form and content requirements of section 52 of the *Act*, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*.

As I have determined that the landlord is entitled to an Order of Possession pursuant to sections 47(1)(b) and 55 of the *Act*, I decline to consider if the landlord is entitled to an Order of Possession based on the other grounds claimed.

### Conclusion

The tenants' application is dismissed without leave to reapply.

Pursuant to sections 47(1)(b) and 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenants**. Should the tenants 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: August 31, 2020

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Residential Tenancy Branch