



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OPC

### Introduction

This hearing dealt with an Application for Dispute Resolution that was filed by the Tenant (the Tenant's Application) and an occupant of the rental unit under the Residential Tenancy Act (the Act), seeking:

- Cancellation of a One Month Notice to End Tenancy for Cause (the One Month Notice).

This hearing also dealt with a Cross-Application for Dispute Resolution that was filed by the Landlord (the Landlord's Application) under the Act, seeking:

- An Order of Possession based on the One Month Notice.

The hearing was convened by telephone conference call and was attended by the Landlord, who provided affirmed testimony. The Tenants did not attend. The Landlord was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure); however, I refer only to the relevant and determinative facts, evidence and issues in this decision.

At the request of the Landlord, copies of the decision and any orders issued in their favor will be emailed to them at the email address provided in their Application.

I note that section 55 of the Act requires that when a tenant submits an Application 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 section 52 of the *Act*.

The Rules of Procedure state that the respondent must be served with a copy of the Application and Notice of Hearing. As no one appeared on behalf of the Tenant and occupant in the hearing, I confirmed service of these documents as explained below.

The Landlord testified that their Application, the Notice of Hearing, and their documentary evidence was personally served on the Tenant D.A., who is the only respondent in the Landlord's Application, on approximately August 11, 2020, in the presence of a witness. Based on the above, and in the absence of any evidence to the contrary, I find that the Tenant D.A. was personally served with the above noted documents in accordance with the Act and the Rules of Procedure on approximately August 11, 2020. Further to this, I note that the Tenant's Application was also set to be heard before me at the same time as the Landlord's Application. As a result, I find that the Tenant and occupant were both duly aware of the date and time of the hearing from their own Application and that of the Landlord.

Rule 7.3 of the Rules of Procedure states that 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. As a result, the hearing of the Landlord's Application proceeded as scheduled, despite the absence of the Tenants.

The Landlord also stated that they were never served with any documents, a Notice of Hearing, or a copy of an Application by the Tenant or occupant. Based on the above and the fact that no one appeared in the hearing on behalf of the Tenant or occupant, I therefore dismiss the Tenant's Application without leave to reapply.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence and issues in this decision.

At the request of the Landlord, copies of the decision and any orders issued in their favor will be emailed to them at the email address provided in their Application.

### Preliminary Matters

Although the Tenants' Application lists two applicants, D.A. and N.P., only D.A. is listed as a tenant on the tenancy agreement and the Landlord referred only to D.A. as the tenant. Based on the above, I find that only D.A. is a tenant under the Act and that N.P. is therefore an occupant of the rental unit with no rights or responsibilities under the Act or the tenancy agreement. As a result, any orders issued for possession of the rental unit will name only the tenant D.A., referred to as the Tenant throughout this decision.

### Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession?

### Background and Evidence

The tenancy agreement in the documentary evidence before me, signed on July 31, 2019, states that the month to month (periodic) tenancy started on August 1, 2019, that rent in the amount of \$1,000.00 is due on the last day of each month, and that a security deposit in the amount of \$500.00 was paid. During the hearing the Landlord confirmed that these are the correct terms of the tenancy agreement.

The Landlord stated that the Tenant D.A. has been late paying rent on at least 4-5 occasions between August 1, 2019 and March 1, 2020, and that a 10 Day Notice to end Tenancy for Unpaid Rent or Utilities was served on the Tenant at the start of March for failure to pay rent on February 29, 2020. As a result, the Landlord stated that a One Month Notice was served on the Tenant for repeated late payment of rent.

The One Month Notice in the documentary evidence before me, signed and dated July 23, 2020, has an effective date of August 23, 2020, and states that the One Month Notice has been served as the Tenant has repeatedly paid rent late. During the hearing the Landlord testified that the One Month Notice was personally served on the Tenant on July 23, 2020, in the presence of a witness, and submitted a witnessed and signed proof of service document in support of this testimony.

The Landlord stated that the Tenant D.A., who is the only Tenant listed on the tenancy agreement, and other occupants permitted to reside in the rental unit by the tenant, continue to reside in the rental unit despite the issuance of the One Month Notice and the fact that no rent has been paid since June of 2020. As a result of the above, the Landlord sought an Order of Possession for the rental unit as soon as possible.

No one appeared on behalf of the Tenant or occupant to provide any evidence or testimony for my consideration either in support of the Tenant's Application or in dispute of the Landlord's Application.

### Analysis

I accept the Landlord's undisputed documentary evidence and affirmed testimony that the Tenant has paid rent late at least 4-5 times between April 1, 2019 and March 1, 2020, and that the One Month Notice was personally served on the Tenant on July 23, 2020.

Based on the above, I find that I am satisfied by the Landlord that the Landlord had cause pursuant to section 47(1)(b) of the Act and Residential Tenancy Policy Guideline #38 to serve the One Month Notice and end the tenancy. Although the effective date of the One Month Notice does not meet the minimum time period requirements set out in section 47(2) of the Act, I find that the effective date is automatically corrected to August 30, 2020, the earliest date that does, pursuant to section 53 of the Act.

As the One Month Notice is in writing on the approved form, signed and dated by the Landlord, contains the address for the rental unit and an effective date and states the grounds for ending the tenancy, I therefore find that it complies with section 52 of the Act. As a result, I find that the Landlord is therefore entitled to an Order of Possession for the rental unit pursuant to section 55(1) of the Act. Further to this, I find that the Landlord would also have been entitled to an Order of Possession pursuant to section 55(1) of the Act as the Tenant's Application seeking cancellation of the One Month Notice was dismissed and the One Month Notice complies with section 52 of the Act.

As the corrected effective date of the One Month Notice has passed and the Landlord testified that rent has not been paid in several months, the Order of Possession will be effective two (2) days after service on the Tenant.

### Conclusion

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **two (2) days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order

may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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: September 10, 2020

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Residential Tenancy Branch