



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC-MT, OLC, FFT

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a One Month Notice to End Tenancy for Cause dated September 6, 2020 ("One Month Notice"), for an order directing the landlord to comply with the Act, regulation or tenancy agreement, and to recover the \$100.00 cost of their Application filing fee.

The Landlord appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenants. The Tenants were provided with a copy of the Notice of a Dispute Resolution Hearing on September 17, 2020. The teleconference phone line remained open for over 30 minutes and was monitored throughout this time. The only person to call into the hearing was the Landlord, who indicated that she was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Landlord.

I explained the hearing process to the Landlord and gave her an opportunity to ask questions about the hearing process. During the hearing the Landlord was given the opportunity to provide her evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

The Tenants' email address was in their Application, and the Landlord provided her email address at the outset of the hearing. She also confirmed her understanding that the Decision would be emailed to both Parties, with any Orders emailed to the appropriate Party.

Following the ten-minute waiting period, the Tenants' Application was **dismissed without leave to reapply**, as the Tenants failed to attend the hearing to present the merits of their Application or at the very least cancel their scheduled hearing in advance of the hearing. The Landlord did attend the hearing and was ready to proceed.

When a tenant applies to cancel a notice to end tenancy issued by a landlord, section 55 of the Act requires me to consider whether the landlord is entitled to an order of possession. This is the case if I dismiss the application and if the notice to end tenancy is compliant with section 52 of the Act, as to form and content.

#### Issue(s) to be Decided

- Should the One Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an Order of Possession?

#### Background and Evidence

The Tenants submitted a copy of the tenancy agreement, and the Landlord confirmed that it contains the following details. The fixed-term tenancy began on March 11, 2020 running to March 11, 2021, with a monthly rent of \$650.00, due on the first day of each month. The Landlord confirmed that the Tenants paid her a security deposit of \$650.00, and a \$200.00 pet damage deposit.

The Landlord's One Month Notice was dated September 6, 2020, it has the rental unit address, it was served in person on September 6, 2020, with the effective vacancy date of October 6, 2020, automatically corrected to October 31, 2020 by s. 53 of the Act. The grounds for the eviction set out on the One Month Notice are that the Tenants are repeatedly late paying rent. Further, the Landlord wrote the following as other reasons for the eviction notice:

They use inappropriate and abusive language and yelling on us when we go there. Went to fix roof with maintenance guy. She yelled at me and used the F word and called the police, not wanting to let me in. She kept more than one pet. She's allowed one pet. I don't know how many in there. Rent paying in very small installments, for example 10, 20, 571, without asking. Threatening we want to change the door knob.

## Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 47 of the Act allows the landlord to end a tenancy for cause:

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- (a) the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;
- (b) the tenant is repeatedly late paying rent;
- (c) there are an unreasonable number of occupants in a rental unit;
- (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,
  - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
  - (iii) put the landlord's property at significant risk;

Rule 6.6 sets out the standard of proof and the onus of proof in dispute resolution proceedings, as follows:

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

In this case, the Landlord alleged that the Tenants were repeatedly late in paying their

rent and would pay in small increments throughout the month.

The Landlord's larger concern, however, was with the treatment she received from the Tenants when she would attend for maintenance and other matters. She said that they would swear at her and not let her in to do maintenance. I find from the Landlord's testimony and her note on the One Month Notice that the Tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord, pursuant to section 47 of the Act. I also find that the Tenants were repeatedly late paying rent in breach of the Act and the tenancy agreement.

When I consider all the evidence before me overall, I find that the Landlord has provided sufficient evidence to meet her burden of proof on a balance of probabilities, and to support the validity of the One Month Notice.

I also find that the One Month Notice issued by the Landlord complies with section 52 of the Act as to form and content. Given the above, and pursuant to section 55 of the Act, I find that the Landlord is entitled to an Order of Possession.

### Conclusion

The Tenants are unsuccessful in their Application to cancel the One Month Notice. I dismiss the Tenants' Application wholly, as they did not attend the hearing to present the merits of their case. Further, I find that the One Month Notice is valid and effective as of October 31, 2020.

Given that the Tenants did not abide by the One Month Notice and more by the effective vacancy date, I find that they are overholding in the rental unit, as the effective vacancy date has passed.

Accordingly, and pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenants. The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order**, as soon as possible.

Should the Tenants 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 final and binding on the Parties, unless otherwise provided under the

Act, and 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 05, 2020

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Residential Tenancy Branch