



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HARRON INVESTMENTS INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, CNR, LRE, AAT

### Introduction

This hearing dealt with the tenant's 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;
- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46;
- an Order that the landlord's right to enter be suspended or restricted, pursuant to section 70; and
- an Order to Allow Access for the Tenant or their guests, pursuant to sections 30 and 70.

The landlord's agent (the "agent"), the building manager and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord accepted service of the tenant's application for dispute resolution.

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 or the landlord's notice to end tenancy is upheld and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

### Preliminary Issue- Severance

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the Notices to End Tenancy and the continuation of this tenancy are not sufficiently related to any of the tenant's other claims to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the Notices to End Tenancy.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the Notices to End Tenancy. I exercise my discretion to dismiss all of the tenant's claims with leave to reapply except cancellation of the Notices to End Tenancy.

### Issues to be Decided

1. Is the tenant entitled to cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47 of the *Act*?
2. Is the tenant entitled to cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46 of the *Act*?
3. If the tenant's application is dismissed or any of the landlord's Notices to End Tenancy are upheld, and the Notice(s) to End Tenancy comply with the *Act*, is the landlord entitled to an Order of Possession, pursuant to section 55 of the *Act*?

### Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on September 1, 2018 and is currently ongoing. Monthly rent in the amount of \$1,127.00 is payable on the first day of each month. A security deposit of \$550.00 was paid by the tenant to the landlord.

A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The agent testified that a 10 Day Notice for Unpaid Rent (the "First 10 Day Notice") was posted on the tenant's door in September, but the landlord could not recall on what date. The tenant testified that he received the First 10 Day Notice but could not recall on what date. Both parties agree that the tenant paid September 2020's rent on September 17, 2020.

The agent testified that a 10 Day Notice for Unpaid Rent dated October 16, 2020 (the "Second 10 Day Notice") was posted on the tenant's door on October 16, 2020. The tenant testified that he received the Second 10 Day Notice on or around October 16, 2020. Both parties agree that the tenant did not pay rent within five days of receipt of the Second 10 Day Notice. Both parties agreed that the tenant has not paid October or November 2020's rent. The tenant testified that he was unable to pay his rent because his bank account was defrauded.

The agent testified that a One Month Notice for Cause dated October 21, 2020 (the "One Month Notice") was posted on the tenant's door on October 21, 2020. The tenant testified that he received the One Month Notice on October 21, 2020. The effective date of the One Month Notice is November 30, 2020.

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

- Tenant is repeatedly late paying rent.
- Breach of material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so; and
- Tenant has assigned or sublet the rental unit/site without the landlord's written consent.

The agent testified that the landlord is not pursuing the following reasons for ending the tenancy:

- Breach of material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so; and
- Tenant has assigned or sublet the rental unit/site without the landlord's written consent.

Both parties agree that the tenant was late paying rent in August, September, October and November 2020. The agent testified that the One Month Notice was served on the tenant because the landlord decided to be kind and not pursue the Second 10 Day

Notice. The agent testified that if the landlord is successful in obtaining an Order of Possession, the landlord is not seeking a two-day order of possession and would consent to the tenant moving out on January 27, 2021.

### Analysis

I find that all Notices to End Tenancy were served on the tenant 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.

Based on the testimony of both parties, I find that the tenant was late paying rent in August, September, October and November of 2020. I therefore dismiss the tenant's application to cancel the One Month Notice without leave to reapply.

I find that the One Month Notice complies with section 52 of the *Act*.

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:

- (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 since the One Month Notice complies with section 52 of the *Act* and the tenant's application to cancel the One Month Notice was dismissed, the landlord is entitled to a two-day Order of Possession. As the agent testified that the landlord would permit the tenant to stay at the subject rental property until January 27, 2020, I award the landlord an Order of Possession effective at 1:00 p.m. on January 27, 2020.

As I have determined that the landlord is entitled to an Order of Possession pursuant to the One Month Notice, I decline to consider if the landlord is entitled to an Order of Possession pursuant to the 10 Day Notices.

### Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective at **1:00 p.m. on January 27, 2021**, which should be served 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.

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: January 21, 2021

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Residential Tenancy Branch