



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC-MT, FFL

### Introduction

This hearing dealt with the Application for Dispute Resolution filed by the Tenant under the *Residential Tenancy Act* (the “Act”) to cancel a One-Month Notice to End Tenancy for Cause (the “One-Month Notice”) issued November 21, 2020, for more time to file to dispute the Notice, and for the return of their filing fee. The matter was set for a conference call.

Both the Landlord and Tenant attended the hearing and were each affirmed to be truthful in their testimony. They were each provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure requires the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter is described in this Decision.

### Issues to be Decided

- Should the One-Month Notice issued on November 21, 2020, be cancelled?
- Is the Tenant entitled to more time to file to dispute the Notice?
- If not, is the Landlord entitled to an order of possession?
- Is the Tenant entitled to the return of their filing fee?

### Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

Both parties agreed that the Landlord served the One-Month Notice to end tenancy to the Tenant on November 11, 2020, by placing the notice in the Tenant's mailbox. The reason for the Notice was checked off as follows:

- *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*
  - *Put the Landlord's property at significant risk*

The Notice states the Tenant must move out of the rental unit by December 31, 2020. The Notice informed the Tenant of the right to dispute the Notice within 10 days after receiving it. The Notice also informed the Tenant that if an application to dispute the Notice is not filed within 10 days, the Tenant is presumed to accept the Notice and must move out of the rental unit on the date set out on page one of the Notice.

The Landlord testified that the Tenant has been late in paying their rent seven times this past year, March 2020, September 2020, October 2020, November 2020, December 2020, January 2021, and February 2021. The Landlord testified that the Tenant pays their rent by depositing the funds directly to the Landlord's bank account.

The Tenant testified that they agreed that they had paid the rent late seven times in the last year.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Tenant received the One-Month Notice on November 23, 2020, three days after it had been placed in their mail slot, pursuant to the deeming provision set out in section 90 of the Act.

Pursuant to section 47 of the *Act*, a tenant who received a notice pursuant to this section has ten days to dispute the Notice after it had been received. Accordingly, I find that the Tenant had until December 3, 2020, to file their application to dispute this One-Month Notice. I have reviewed the Tenant's application, and I find that the Tenant filed their application on December 3, 2020, within the statutory time limit.

Section 47 of the *Act* provides that a landlord may end a tenancy where the tenant is repeatedly late paying rent. The Residential Tenancy Policy Guideline #38 Repeated Late Payment of Rent gives further guidance stating:

**Residential Tenancy Policy Guideline #38. Repeated Late Payment of Rent**

The Residential Tenancy *Act* provides that 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.

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.

In this case, I accept the sworn testimony of the Tenant that they had paid their rent late seven times in the last 12 months. I find that this is a sufficient number of late rent payments to justify the Notice issued by the Landlord.

Therefore, I dismiss the Tenant's application to cancel the One-Month Notice issued on November 21, 2020.

Section 55 (1) of the *Act* states the following:

***Order of possession for the landlord***

**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 have reviewed the One-Month Notice, and I find that this Notice complies with section 52 of the *Act*.

As I have dismissed the Tenant's application to dispute the One-Month Notice, I find that the Landlord is entitled to an order of possession pursuant to section 55 of the *Act*.

Accordingly, I grant the Landlord an order of possession effective not later than 1:00 p.m. on March 31, 2021. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that the costs of such enforcement are recoverable from the Tenant.

Since the tenancy has ended due to a fundamental breach of the tenancy agreement regarding the late payment of rent, there is no need to consider the remaining issues listed on the Notice.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has not been successful in their application, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

The Tenant's Application to cancel the One-Month Notice, issued on November 21, 2021, is dismissed. I find the Notice is valid and complies with the *Act*.

I grant an **Order of Possession** to the Landlord, effective not later than 1:00 p.m. on March 31, 2021. The Tenant must be served with this Order. 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: February 22, 2021

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Residential Tenancy Branch