



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Vancouver Native Housing Society and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC, MNRL-S, FFL  
                              CNC

### Introduction

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

- cancellation of the One Month Notice to End Tenancy, pursuant to section 47.

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

- an Order of Possession for Cause, pursuant to sections 47 and 55;
- a Monetary Order for unpaid rent, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

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

Both parties agree that they were each served with the other's application for dispute resolution. I find that the parties were sufficiently served for the purposes of this *Act*, pursuant to section 71 of the *Act* with the other's application for dispute resolution.

### Amendment

The landlord's application for dispute resolution did not list tenant G.A. and uses tenant A.A.'s maiden name. Both parties agreed that A.A. and G.A. are tenants and both were

served with the landlord's evidence and application for dispute resolution. Tenant A.A. testified that she legally changed her name to her married name. Pursuant to section 64 of the *Act*, I amend the landlord's application to list both tenants and tenant A.A.'s legal married name.

The landlord's application for dispute resolution states that the tenants owe \$1,202.50 in unpaid rent. The agent testified that tenant currently owe \$487.00 and sought to amend the landlord's claim to the reduced amount. Pursuant to section 64 of the *Act*, I so amend.

### Issues to be Decided

1. Are the tenants entitled to cancellation of the One Month Notice to End Tenancy, pursuant to section 47 of the *Act*?
2. Is the landlord entitled to an Order of Possession for Cause, pursuant to sections 47 and 55 of the *Act*?
3. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to section 67 of the *Act*?
4. Is the landlord entitled to retain the tenant's security deposit, pursuant to section 38 of the *Act*?
5. Is the landlord entitled to recover the filing fee for this application from the tenant, pursuant to section 72 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 tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on September 1, 2009 and is currently ongoing. A security deposit of \$892.50 and a pet deposit of \$150.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by an agent of the landlord and tenant A.A. and a copy was submitted for this application.

The landlord testified that on November 25, 2020 a One Month Notice to End Tenancy for Cause with an effective date of December 31, 2020 (the "One Month Notice") was

posted on the tenants' door. The tenants confirmed receipt of the One Month Notice "a few days after that". The tenants' filed to dispute the One Month Notice on December 4, 2020.

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

- Tenant is repeatedly late paying rent.

Both parties agree that the tenants were late paying rent for the following months of 2020: January, February, March, September, October, November, and December.

Both parties agree that the tenant's rent is based on income and that in January of 2020 the tenants' rent was \$1,062.00. Both parties agree that the tenants' income was reviewed in September of 2020 and that based on the tenants' income, rent was increased to \$1,875.00 effective October 1, 2020. Both parties agree that the tenant's income was review again and was increased to \$2,118.00 effective February 1, 2021.

The tenants disputed the landlord's income calculations. The tenants testified that their rent should not be \$2,118.00 and that the current amount outstanding for rent is the difference between their new rent and the previous rent of \$1,875.00 per month.

The landlord testified that the tenants' income was calculated based on the documents provided by the tenants and that the tenants did not provide all required documents for the most recent recalculation which resulted in the rental rate of \$2,118.00. No evidence regarding the most recent income calculations were entered into evidence.

### Analysis

I find that the One Month Notice was served on the tenants in accordance with section 88 of the *Act*. I find that the One Month Notice conforms to the form and content requirements of section 52 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 find that the tenants were late paying rent for the following months of 2020: January, February, March, September, October, November, and December. I note that the amount of rent for January, February, March, and September was not contested. I find that the tenants were late paying rent on more than three occasions in 2020 contrary to section 47(1)(b) of the *Act* and Residential Policy Guideline 38. The landlord is therefore entitled to an Order of Possession effective March 31, 2021.

I find that the landlord has not proved, on a balance of probabilities, that the tenants' rent was correctly increased in February 2021 as no subsidy review materials were entered into evidence. As the landlord's monetary claim is based on the increase of rent effective February 1, 2021, I dismiss the landlord's monetary claim without leave to reapply.

As the landlord was successful in their application for an Order of Possession, I find that the landlord is entitled to recover the \$100.00 filing fee, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain \$100.00 from the tenants' security deposit.

### Conclusion

The landlord is entitled to retain \$100.00 from the tenants' security deposit, pursuant to section 72 of the *Act*.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective at **1:00 p.m. on March 31, 2021**, which should be served 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.

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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: March 02, 2021

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Residential Tenancy Branch