



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

LL: OPL OPC FFL

TT: OLC CNL CNR CNC OLC FFT

### Introduction

This hearing dealt with applications from both the landlord and tenants pursuant to the *Residential Tenancy Act* (the “Act”).

The landlords applied for:

- An order of possession of the rental unit pursuant to section 55; and
- Authorization to recover the filing fee from the tenants pursuant to section 72.

The tenants applied for:

- An order that the landlords comply with the Act, regulations or tenancy agreement pursuant to section 62;
- Cancellation of a 2 Month Notice to End Tenancy for Landlord’s Use pursuant to section 49;
- Cancellation of a 10 Day Notice to End Tenancy for Landlord’s Use pursuant to section 46;
- Cancellation of a 1 Month Notice to End Tenancy for Cause pursuant to section 47; and
- Authorization to recover the filing fee from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As the parties were present service of documents was confirmed. While there was some initial confusion caused by the volume of Notices issued by the landlords and the parties' choice to file a number of separate applications instead of amending their initial applications I was satisfied that each party was in receipt of the materials and find that each party was duly served in accordance with sections 88 and 89 of the *Act* with the respective materials.

### Issue(s) to be Decided

Should the landlords' Notices to End Tenancy be cancelled? Are the landlords entitled to an Order of Possession?

Should the landlords be ordered to comply with the Act, regulations or tenancy agreement?

Is either party entitled to recover the filing fee from the other?

### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This tenancy began in October 2019. The monthly rent is \$1,600.00. A security deposit of \$800.00 was paid and is still held by the landlords.

The tenant submits that the monthly rent is payable in two installments of \$800.00 due on the 1<sup>st</sup> and 10<sup>th</sup> of each month. The landlords dispute such an agreement and testified that rent is payable on the 1<sup>st</sup> as set out in the signed tenancy agreement.

The landlord issued a 1 Month Notice dated January 10, 2020 indicating the reason for the tenancy to end is that the tenants have been repeatedly late in paying rent. The landlords submitted into evidence copies of their bank statements showing payments received from the tenants over the course of the tenancy. The evidence shows various amounts paid on inconsistent days of the month. The landlords also submitted into evidence copies of text message correspondence with the tenants where they consistently request full payment of rent and advise the tenants of the date that rent is due.

### Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter at hand the landlord must demonstrate that the tenants have been repeatedly late paying rent.

Residential Tenancy Policy Guideline 38 provides that three late payments are the minimum number to justify a notice to end tenancy. I accept the parties' evidence that the tenants have been late paying rent for the majority of the past year. Even if I were to accept the tenants' submission that rent is payable in 2 installments of \$800.00 on the 1<sup>st</sup> and 10<sup>th</sup> of each month, for which I note there is little documentary evidence, the history of payments as shown in the landlord's banking information demonstrates that the tenants have failed to make full payment on those days for much of the past several months. I find the evidence shows that the tenants have failed to pay rent as required in October and November 2020 and January 2021. I therefore find that the tenants have been repeatedly late paying rent. Accordingly, I find that the landlord has shown on a balance that there is cause to end this tenancy and dismiss the tenants' application and allow the landlords' application seeking an Order of Possession.

I find that the landlords' 1 Month Notice meets the form and content requirements of section 52 of the *Act* as it is in the approved form and clearly identifies the parties, the address of the rental unit and the effective date of the notice. The notice provides the reasons for ending the tenancy, the repeated late payment of rent.

As I find this tenancy is ending by way of the 1 Month Notice I find it unnecessary to make a determination on the other portions of the application seeking cancellation of the other Notices to End Tenancy.

As the landlords were successful in their application, they are entitled to recover the filing fee from the tenants. I allow the landlords to satisfy this monetary award by deducting \$100.00 from the security deposit for this tenancy.

Conclusion

The tenants' applications are dismissed in their entirety without leave to reapply.

I grant an Order of Possession to the landlords effective **2 days after service on the tenants**. Should the tenants or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The security deposit for this tenancy is reduced by \$100.00 from \$800.00 to \$700.00.

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: April 19, 2021

---

Residential Tenancy Branch