



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, CNC, RP, OLC

### Introduction

On February 18, 2021, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting an order for the Landlord to comply with the Act and to complete repairs to the rental unit. On March 1, 2021, the Tenant amended the Application and added a request to cancel both a 10 Day Notice to End Tenancy and a One Month Notice to End Tenancy. The matter was set for a participatory hearing via conference call.

The Landlord and Tenant attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

### Preliminary Matters

The issues regarding a request to cancel the 10 Day Notice, to order the Landlord to comply with the Act, and to order repairs was determined as not related to the main issue in the dispute and was severed as per *Rules of Procedure 2.3 - Related Issues*.

### Issues to be Decided

Should the One Month Notice to End Tenancy for Cause, dated February 25, 2021 (the “One Month Notice”) be cancelled, in accordance with section 47 of the Act?

If the One Month Notice is not cancelled, should the Landlord receive an Order of Possession, in accordance with section 55 of the Act?

### Background and Evidence

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 are described in this Decision.

Both parties agreed to the following terms of the tenancy:

The month-to-month tenancy began on July 1, 2016 as an oral agreement; there is no formal Tenancy Agreement as part of this tenancy. The rent is \$675.00 and due on the first of each month. The Landlord collected and still holds a security deposit in the amount of \$340.00.

The Landlord submitted that the Tenant has been regularly paying his rent late and that the Tenant was reminded, via text, in December 2019 and September 2020, that the rent was due on the first of each month.

The Landlord submitted a copy of the One Month Notice and provided undisputed testimony that the notice was served to the Tenant on February 25, 2021 by placing it in his mailbox and then texting the Tenant to notify him that it was there. The effective (move-out) date is March 31, 2021. The reasons for the end of tenancy, as noted on the One Month Notice, included that the Tenant was repeatedly late paying rent; the Tenant significantly interfered with or unreasonably disturbed another occupant or the Landlord; seriously jeopardized the health or safety or lawful right of another occupant or the Landlord.

The Landlord submitted rent invoices and copies of text messages to support that the Tenant paid rent late in October, November, and December 2020. On February 17, 2021, the Landlord served a 10 Day Notice to End Tenancy for Unpaid rent to the Tenant and the Tenant responded by paying January and February 2021 rent. The Landlord stated that the Tenant paid his rent on time on March 1, 2021 but failed to pay for use and occupancy of the rental unit for April 2021 until April 6, 2021.

The Landlord testified about repairs that he was attempting to do in the bathroom of the rental unit and stated that the Tenant regularly frustrated him and did not provide access to the bathroom. The Landlord submitted text messages from February 2021 where he requested the Tenant to provide access two or three times for 3-4 hours each time, so the work could be completed. The Tenant kept on coming up with reasons why it wouldn't work for him and suggested that it would have to be arranged when he (the Tenant) could find a place to stay for five days in a row.

The Landlord requests an Order of Possession for the rental unit and if granted, asked for an effective date of April 30, 2021.

The Tenant testified that the Landlord is only trying to evict him because he (the Tenant) has been attempting to get the Landlord to complete the repairs in a safe manner and in a way that does not threaten the Tenant's health.

The Tenant acknowledged that the Landlord's evidence about late rent was generally correct. The Tenant stated that his rent was fully paid when he received the One Month Notice and that the Landlord had been reasonable with the late rent until they started arguing about the repairs.

The Tenant submitted that the removal of black mold was dangerous and that the Landlord wasn't planning on doing it properly. The Tenant suggested ways for the Landlord to address the repairs and this included having the Tenant move out of the rental unit for five to seven days while the repairs were being completed.

The Tenant requested some time to find a new place if an Order of Possession was granted to the Landlord.

### Analysis

The Landlord has served the One Month Notice on the Tenant based on sections 47(1)(b) and 47(1)(d) of the Act. When I consider the validity of the reasons the Landlord has for ending the tenancy, I must determine if the Landlord has sufficient evidence to prove that the Tenant is repeatedly late paying rent or if the Tenant's actions significantly interfered with or unreasonably disturbed another occupant, or seriously jeopardized the health and safety or a lawful right of another occupant or the Landlord. The standard of proof is based on the balance of probabilities. If I find that any one of the reasons set out in the One Month Notice are valid and that the Notice complies with section 52 of the Act, I must grant the Landlord an Order of Possession for the rental unit in accordance with section 55 of the Act.

I accept the Landlord's undisputed evidence that the Tenant has been warned about paying rent on time and has paid rent late five times out of the six months since October 2020.

*The Residential Tenancy Policy Guideline #38* establishes that three late rent payments are the minimum number sufficient to justify a notice to end tenancy under the Act.

Based on a balance of probabilities, I find that the Tenant has been repeatedly paying rent late and that the Landlord has established a valid reason to end the tenancy.

Section 52 of the Act requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord; give the address of the rental unit; state the effective date, state the grounds for ending the tenancy; and be in the approved form. I find the One Month Notice, dated February 25, 2021, complies with the requirements set out in Section 52.

I have found that at least one of the reasons for the One Month Notice is valid and that the notice is compliant with the Act. As such, I dismiss the Tenant's request to cancel the One Month Notice. As the Tenant is still occupying the rental unit, I grant the Landlord an Order of Possession for the effective move-out date of April 30, 2021.

### Conclusion

Pursuant to section 55 of the Act, I grant the Landlord an Order of Possession to be effective on April 30, 2021 at 1:00 p.m. This Order should be served on the Tenant as soon as possible. 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: April 20, 2021

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Residential Tenancy Branch