



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FFT

### Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on January 28, 2021, wherein the Tenant sought to cancel a 1 Month Notice to End Tenancy for Cause issued on January 19, 2021 (the "Notice") in addition to recovery of the filing fee.

The hearing of the Tenant's Application was scheduled for 11:00 a.m. on April 26, 2021. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties were cautioned that recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matter

Hearings before the Residential Tenancy Branch are conducted in accordance with the *Residential Tenancy Branch Rules of Procedure*. *Rule 4.2* of the *Rules* allows me to

amend an Application for Dispute Resolution in circumstances where the amendment might reasonably have been anticipated. The authority to amend is also provided for in section 64(3)(c) of the Act which allows an Arbitrator to amend an Application for Dispute Resolution.

On the Application the Tenant named the Landlord's former property manager as Landlord. A review of the tenancy agreement confirms the Landlord is the property party to these proceedings. I therefore Amend the Tenant's Application to remove the Landlord's former property manager.

### Issues to be Decided

1. Should the Notice be cancelled?
2. Is the Tenant entitled to recover the filing fee?

### Background and Evidence

*Rule 6.6* provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, even though the Tenant applied for dispute resolution and is the Applicant, the Landlord presented their evidence first.

The Landlord testified that this tenancy began November 1, 2020. The Tenant was obligated to pay monthly rent in the amount of \$2,800.00. A copy of the residential tenancy agreement was also provided in evidence and which, pursuant to clause 7, required the Tenant to pay a pet damage deposit by December 1, 2020.

The Landlord testified that the Tenant failed to pay the pet damage deposit as required. He further testified that despite warning the Tenant that her tenancy was in jeopardy, and serving her with the Notice, the Tenant has failed to pay the pet damage deposit.

The Landlord testified that he served the Notice on the Tenant by registered mail sent on January 19, 2021. The Tenant applied to dispute the Notice on January 28, 2021.

In response to the Landlord's submissions the Tenant testified as follows. The Tenant confirmed that she did not pay the pet damage deposit. She stated that she called the Landlord's property management company who told her she had until the end of

January 2021 to pay. She further confirmed that after she received the Notice she did not pay the pet damage deposit as she believed her tenancy was ending and needed the money to secure new rental accommodation.

### Analysis

The Notice was issued pursuant to section 47(1)(a) of the *Act* which reads as follows:

#### **Landlord's notice: cause**

**47** (1)A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(a)the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;

A copy of the tenancy agreement was provided in evidence and which confirmed that the Tenant was to pay the pet damage deposit by December 1, 2020. The Tenant testified that the Landlord's former property managers told her she had until the end of January 2021 in which to pay the deposit; she failed to provide any documentary evidence which would support her testimony that she was granted an extension in terms of the date by which she was required to pay the pet damage deposit.

The Landlord denied the property managers were instructed to accept a later payment of the deposit. Introduced in evidence by the Landlord were two emails sent to the Tenant by the property manager, D.R., dated December 3, 2020 and January 2, 2021 respectively, wherein D.R. request that the Tenant pay the pet damage deposit.

On balance, I find the Tenant has failed to prove that the Landlord agreed she could pay the deposit after December 1, 2020. The evidence before me confirms the Landlord's property manager reminded the Tenant on two separate occasions that the deposit needed to be paid. I therefore find that the Tenant was required to pay the pet damage deposit by December 1, 2020.

The undisputed evidence before me is that the Tenant failed to pay the pet damage deposit by December 1, 2020. Further, it was undisputed that the Tenant has failed to pay the pet damage even after being warned her tenancy was in jeopardy and after receiving the Notice.

I therefore find the Landlord has proven the reasons for issuing the Notice and has proven that the Tenant failed to pay the pet damage deposit within 30 days of the date it was required to be paid under the tenancy agreement. As such, the Tenant's request to cancel the Notice is dismissed.

Section 55 of the *Residential Tenancy Act* provides as follows:

**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 Notice and confirm it complies with section 52 of the *Act*. As I have dismissed the Tenant's Application, I grant the Landlord an Order of Possession effective **two days** after service upon the Tenant. This Order must be served on the Tenant and may be enforced in the Supreme Court of British Columbia.

Having been unsuccessful in her Application I dismiss the Tenant's request for recovery of the filing fee pursuant to section 72 of the *Act*.

### Conclusion

The Tenant's request for an Order canceling the Notice and recovery of the filing fee is dismissed.

The Landlord is granted an Order of Possession.

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 28, 2021

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Residential Tenancy Branch