



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Villa Margareta co Bayside Property Services  
Ltd and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC, MNRL-S, FFL

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking an Order of Possession for cause; a monetary order for unpaid rent or utilities; an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application.

The landlord was represented at the hearing by an agent who gave affirmed testimony and was accompanied by 2 observers. The tenants both attended the hearing with a support person, and were represented by Legal Counsel.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Has the landlord established that an Order of Possession ought to be granted for repeated late rent?
- Has the landlord established a monetary claim for unpaid rent?
- Should the landlord be permitted to keep any part of the security deposit in full or partial satisfaction of the claim?

### Background and Evidence

**The landlord's agent** testified that this fixed term tenancy began on March 1, 1998 which reverted to a month-to-month tenancy after the first 12 months, and the tenants still reside in the rental unit. Rent in the amount of \$730.00 was originally payable on the 1<sup>st</sup> day of

each month, which has been increased from time-to-time, and is currently \$1,170.00 per month. On February 16, 1998 the landlord collected a security deposit from the tenants in the amount of \$365.00, which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment in a complex containing 56 units, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord's agent further testified that on April 23, 2021 the tenants were served with a One Month Notice to End Tenancy for Cause by registered mail. A copy has been provided as evidence for this hearing, and it is dated April 23, 2021 and contains an effective date of vacancy of May 31, 2021. The reason for issuing it states: "Tenant is repeatedly late paying rent."

The landlord has provided a copy of a spreadsheet entitled "Summary of Rental Payments," showing the dates rent was paid from November, 2019 to May, 2021, although a typing error exists indicating May, 2001. The landlord sent a letter to the tenants on April 13, 2021 stating that paying rent on time is a material term of the tenancy agreement, and requesting that rental arrears of \$304.00 to be paid. A copy has been provided for this hearing. It also states that: "Going forward you are required as a material term of your Tenancy Agreement to pay rent in full and on time. Failure to do this may result in further action being taken which may include eviction."

The landlord has also provided a Summary of Rental Payments from November, 2019 to April 4, 2021 showing that all payments received by the landlord were later than the 1<sup>st</sup> of the month, with the exceptions of September, 2020 and April, 2021.

The landlord's Monetary Order Worksheet sets out claims totaling \$369.00 for:

- \$244.00 of rental arrears;
- \$25.00 late payment fee; and
- \$100.00 for the filing fee.

Arrears are now \$24.00 and no late fees are outstanding. In July, 2021 the tenants paid \$270.00 cash, which covered \$25.00 late fees, and the landlord claims \$24.00 in addition to the \$100.00 filing fee. The amount outstanding as of June 30, 2021 was \$269.00 and the landlord applied a late charge, and the payment was received after office hours. Given that the receipt given to the tenants by the building manager, the landlord's agent agrees to reduce the claim by the late charge in July. A portion of the rent is paid by a Government Ministry, and for the last few months all of the rent is paid by the Ministry. The landlord's agent is not certain if any receipts were issued for previous months; the building manager collects rents. However, the landlord's agent testified that she received

an email directly from the Ministry dated July 8, 2021 which states, in part, that the rent is paid directly to the landlord.

The landlord has not been served with an Application for Dispute Resolution by the tenants disputing the notice to end the tenancy.

**The tenants' legal counsel** has provided written submissions in the tenants' defence, and further submits that early in May, 2021 the tenants received the notice to end the tenancy. Arrangements were made to pay the arrears with the building manager, and all rent has been paid on time since the Ministry has been paying the rent directly to the landlord.

The letter of the landlord dated April 13, 2021 is the first time the tenants were given any written notice that rent must be paid on time going forward, and that doing so is a material term of the tenancy agreement. The tenants were not given the opportunity to pay the rent in full between that date and the date the notice to end the tenancy was given.

This is a Human Rights issue, given that both tenants have a disability, and have given a letter of apology to the landlord. The circumstances have been remedied and rent is now paid directly to the landlord by the Ministry, and legal counsel for the tenants submits that: "Change of circumstances is a relevant consideration. There is precedent for allowing a tenancy to continue where the underlying issue that led to events that may have justified the end of a tenancy has been remedied." The written submissions indicates that an arbitrator's decision was overturned at Judicial Review in *Hernandez v Barrie* 2007 BCSC 1771, because the arbitrator had speculated about unknown future events.

### Analysis

I have reviewed all of the evidentiary material, and I agree that circumstances have changed since the Notice was issued, in that rent is paid to the landlord directly from a government Ministry and has been paid prior to the first day of the month for the 2 months following the issuance of the Notice.

The *Residential Tenancy Act* specifies that where a tenant fails to dispute a notice to end a tenancy given by a landlord, the tenant is conclusively presumed to have accepted the end of the tenancy. In this case, the landlord's agent testified that the tenants have not served the landlord with an application disputing the Notice, and I have no such applications before me. However, considering the submissions of the tenants' legal counsel that this is a Human Rights matter due to the disabilities of the tenants, I find that the hearing and resulting Decision ought to take that into account. The landlord's agent made no submissions or argument regarding that.

There is a difference between ending a tenancy for breach of a material term of the tenancy agreement and ending a tenancy for repeated late rent. The landlord testified that paying rent on time is a material term of the tenancy agreement, but where a landlord chooses to end a tenancy for breach, the landlord must give the tenant a reasonable time to correct the breach.

The April 13, 2021 letter from the landlord to the tenants is a warning that rent was expected to be paid on time and is a material term of the tenancy agreement, however prior to the date that rent was next due, the landlord issued the notice to end the tenancy for repeated late rent. I agree with counsel for the tenants that the landlord has not acted in good faith when issuing the Notice. Further, the tenants are not in arrears of rent, and since the receipt given to the tenants by the building manager is dated June 30, 2021, the landlord's agent agrees to reduce the monetary claim by the \$25.00 late charge in July. That would mean that the tenant ledger should show a \$1.00 credit in favour of the tenants, and there are no rental arrears. Further, the breach has been corrected; the Ministry now pays the rent directly to the landlord.

This tenancy has lasted almost 24 years, and the landlord's agent specified a number of times that paying rent on time is a material term, but did not give the tenants reasonable time to correct the breach.

I dismiss the landlord's application in its entirety and the tenancy continues.

### Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety, and the tenancy continues.

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: July 22, 2021

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Residential Tenancy Branch