



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPC, 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 and to recover the filing fee from the tenants for the cost of the application.

The landlord and both tenants attended the hearing, and the landlord and one of the tenants gave affirmed testimony. The parties were given the opportunity to question each other.

No issues with respect to service or delivery of evidence were raised, and the landlord advised that all evidence provided for this hearing was delivered to the tenants. The tenants have not provided any evidence, and all evidence of the landlord has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?

### Background and Evidence

**The landlord** testified that this fixed term tenancy began on January 1, 2021 and expires on December 31, 2021, thereafter reverting to a month-to-month tenancy and the tenants still reside in the rental unit. Rent in the amount of \$1,850.00 is payable on the 28<sup>th</sup> day of each month, in advance for the following month, and there are currently no rental arrears. On November 30, 2020 the landlord collected a security deposit from the tenants in the amount of \$925.00 as well as a pet damage deposit in the amount of

\$500.00 on January 1, 2021, both of which are still held in trust by the landlord. The rental unit is a condominium apartment, and a copy of the tenancy agreement has been provided for this hearing.

The landlord further testified that the tenant also voluntarily paid a penalty to the landlord of \$50.00 on January 8, 2021, but cannot recall if any other penalties were paid. The landlord agrees to reimburse the tenant, not knowing that the landlord is not permitted to collect a penalty.

On April 30, 2021 the landlord served the tenants with a One Month Notice to End Tenancy for Cause (the Notice) by posting it to the door of the rental unit as well as by email. A copy of the Notice has been provided as evidence for this hearing and it is dated April 30, 2021 and contains an effective date of vacancy of May 31, 2021. The reasons for issuing it state:

- Tenant is repeatedly late paying rent;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The tenants did not pay rent for January, 2021 until January 8, 2021 but was due on December 28, 2020. Rent for March, 2021 was due on February 28, 2021 but was not paid until March 5, 2021. Also, April's rent was due on March 28, 2021 and the tenants paid half on April 30.

The tenancy agreement permits 1 pet. On April 1, 2021 the parties exchanged text messages about an additional pet in the rental unit, but no timeline was given to the tenants to correct the breach.

The tenants have not served the landlord with an Application for Dispute Resolution disputing the Notice, and if the landlord is granted an Order of Possession the landlord would be content with an effective date of vacancy of September 30, 2021.

**The tenant** (ML) testified that it's been obviously tumultuous about paying rent late. A bank account that the tenant was using was closed due to a car payment issue, which the tenant is still working on.

On March 5, 2021 the tenant paid \$1,900.00 to the landlord by e-transfer which is \$50.00 more than required. Again on July 30, 2021 the tenant paid the landlord \$1,900.00 by e-transfer, which is \$100.00 more than required.

On April 18, 2021 after the parties discussed the extra pet, the tenants agreed to pay an additional pet damage deposit, and \$250.00 was paid that day.

The tenant also testified that the penalty was paid twice voluntarily, not at the request of the landlord.

The tenant didn't receive the Notice until about a week and a half later because the tenants were self-isolating due to COVID-19, which also affected the tenant's memory further. The tenant attempted to dispute the Notice, but has disabilities, including ADHD, and emailed an Application to the Residential Tenancy Branch but received a note that it wasn't accepted. The medications that the tenant takes make the tenant very tired for 18 hours per day, which is why the tenant didn't follow-up on disputing the Notice.

Finances are fixed now, and the tenant now has the support, so rent will be paid on time.

### Analysis

The *Residential Tenancy Act* states that if 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. However, case law also states that a landlord must prove good faith when issuing any type of notice to end the tenancy.

To end a tenancy agreement for breach of a material term the party alleging a breach must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

In this case, the landlord sent a text message to the tenants about a second pet in the rental unit, but did not specify that the pet must be removed by a specific date or deadline, or that if not corrected by the deadline, the landlord would end the tenancy. Therefore, I cannot find that the landlord has established a breach of a material term of the tenancy that was not corrected within a reasonable time after written notice to do so.

The landlord accepted penalties for late rent, but was not able to find the amounts or dates during her testimony. A landlord may not collect or charge any penalties, other than a maximum of \$25.00 for late payment of rent and only if a clause to that effect is

contained in the tenancy agreement. I accept that the landlord did not know that she could not accept any penalties, and the tenancy agreement does not contain any such clause.

The *Act* also states that a landlord may not collect more than 1 pet damage deposit:

**20** A landlord must not do any of the following:

- (a) require a security deposit at any time other than when the landlord and tenant enter into the tenancy agreement;
- (b) require or accept more than one security deposit in respect of a tenancy agreement;
- (c) require a pet damage deposit at any time other than
  - (i) when the landlord and tenant enter into the tenancy agreement, or
  - (ii) if the tenant acquires a pet during the term of a tenancy agreement, when the landlord agrees that the tenant may keep the pet on the residential property;
- (d) require or accept more than one pet damage deposit in respect of a tenancy agreement, irrespective of the number of pets the landlord agrees the tenant may keep on the residential property;
- (e) require, or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit or the pet damage deposit at the end of the tenancy agreement.

The landlord did not dispute the tenant's testimony that the penalties and the second pet damage deposit were collected, which I find must be applied to the rent. I accept that the landlord did not mean to give the Notice without good faith intent, however given the dates that the tenant testified that the amounts were paid, I find that the landlord has received money that must be applied to the rent. The spreadsheet below sets out the payments made to the landlord:

DATE DUE	DATE PAID	AMOUNT DUE	AMOUNT PAID	BALANCE
December 28, 2020	January 8, 2021	\$1,850.00	\$1,850.00	\$0

	January 8, 2021		\$50.00	- \$50.00
January 28, 2021	January 22, 2021	\$1,850.00	\$1,800.00	\$0
February 28, 2021	March 5, 2021	\$1,850.00	\$1,900.00	- \$50.00
March 28, 2021	April 1, 2021	\$1,850.00	\$1,850.00	- \$50.00
April 28, 2021	April 18, 2021	\$1,850.00	\$250.00 (PET)	\$1,550.00
	April 30, 2021		\$925.00	\$625.00

Considering the graph above, the tenant paid \$1,800.00 on January 22, 2021 and didn't owe the landlord the other \$50.00 because the landlord had collected \$50.00 on January 8, 2021. Therefore, the rent payment due on January 28, 2021 was not late.

After all adjustments are made, the tenant was late with the rent due February 28, March 28 and April 28, 2021. The minimum number of late rent payments in order to be considered repeatedly late is 3, and I find that the landlord has established that. The notice to end the tenancy is dated April 30, 2021, and I find that the landlord is entitled to an Order of Possession.

During the course of the hearing the landlord indicated that if successful, the landlord would be content with an effective date of vacancy of September 30, 2021, and I so order.

Since the landlord has been successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the landlord in that amount and I order that the landlord be permitted to keep that amount from the security deposit held in trust, or may otherwise recover it by filing the order in the Provincial Court of British Columbia, Small Claims division for enforcement.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord effective at 1:00 p.m. on September 30, 2021 and the tenancy will end at that time.

I further grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the landlord may keep that amount from the security deposit held in trust or may otherwise recover it.

This order is final and binding and may be enforced.

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: August 23, 2021

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Residential Tenancy Branch