



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding WALL FINANCIAL CORPORATION and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC, FFL, MNDCT, RP, CNC, PSF, OLC, LAT, LRE

### Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the Act). The landlord applied for:

- an order of possession for cause pursuant to section 55;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

The tenants applied for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the landlord served the tenants with the notice of hearing package and the submitted documentary evidence in person on July 28, 2021. Both parties also confirmed the landlord served the tenants with the submitted documentary evidence in person on September 3, 2021. The tenants confirmed that no documentary

evidence was submitted in response to the landlord's application. Neither party raised any service issues.

Both parties confirmed the tenants served the landlord in person with the tenants' notice of hearing package. The tenants stated that they did not serve the submitted documentary evidence to the landlord. Both parties also confirmed the landlord served the tenants with their submitted documentary evidence to the tenants in person on July 28, 2021. Neither party raised any service issues.

I accept the undisputed affirmed evidence of both parties and find that both the landlord and tenants were sufficiently served with the notice of hearing package(s) and the submitted documentary evidence as per section 71 of the Act, with the exception of the tenants' documentary evidence. As the tenants have failed to serve the landlord with their documentary evidence the tenants' documentary evidence is excluded from consideration in this decision.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

At the outset, the landlord argued that the named tenants were not their legal tenants as listed on the submitted copy of the signed tenancy agreement. Extensive discussions took place in which the tenants confirmed that no signed tenancy agreement was made. Both parties confirmed that in mid-January 2021 the named tenants moved in and occupied the rental unit. Both parties agreed that the legal tenants have since moved out. Both parties agreed that the tenants completed with the landlord's agent an application for tenancy and a ministry shelter information form. Both parties agreed that the landlord began accepting partial payments for rent through the ministry. Both parties agreed that as such, the ministry began making direct partial monthly rent payments of \$375.00 to the landlord on behalf of the tenants. The tenants stated that the remaining portion was paid directly by the tenants to the landlord. I also noted that the landlord had argued that she had repeatedly issued receipts for rent payments received for "use and occupancy only". I find that this is only relevant in the landlord's attempt at ending the tenancy regarding a 10 Day Notice and not whether a tenancy was established. I find that despite there being no signed tenancy agreement between these two parties, both the landlord and tenants created a tenancy agreement in which the landlord accepted the named tenants as tenants in exchange for rent paid. The hearing shall proceed.

The tenants' application was also clarified. The tenants requested:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

Extensive discussions took place in which the tenants' application was dismissed with leave to reapply with the exception of the tenants' application to cancel the 1 month notice. The tenants provided direct testimony that the dismissed requests were unrelated to the 1 month notice. On this basis, pursuant to Rule 2.3 of the Rules of Procedure those additional requests are dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

The hearing shall proceed on the landlord's entire application and the tenants' application to cancel the 1 month notice.

#### Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to recovery of the filing fee?

Is the tenant entitled to an order cancelling the 1 month notice?

#### 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 / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

Both parties confirmed that on June 4, 2021, the landlord served the tenant with the 1 Month Notice dated June 4, 2021 in person. The 1 Month Notice sets out an effective end of tenancy date of July 31, 2021 and that it was being given as:

- the tenant is repeatedly late paying rent;
- the tenant has allowed an unreasonable number of occupants in the unit;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.
- the tenant has assigned or sublet the rental unit/site without the landlord's written consent.

The details of cause state:

*Tenants on Tenancy Agreement vacated left a person in suite, no Tenancy Agreement.*  
[reproduced as written]

The landlord stated that since the tenants began occupying the rental unit, the tenants have never paid rent on time and in full. The landlord confirmed that the ministry payments of \$375.00 were paid monthly and the landlord has been issuing 10 Day Notice(s) for Unpaid Rent since February or March of 2021. The landlord stated that rent each month since has been paid late by the tenants. The landlord called a witness another co-worker, S.D. who confirmed that the tenants have been repeatedly late paying rent since February or March 2021 until October 2021. The witness confirmed that she has been issuing 10 Day Notice(s) to the tenants each month.

The tenants confirmed that that she has been late paying rent each month as claimed by the landlord. The tenants stated that she receives her monthly payments after the 1<sup>st</sup> day of each month and routinely pays the rent on or after the 3<sup>rd</sup> of each month.

The landlord also claims that there is an unreasonable number of occupants in the rental unit. The tenants dispute this claim arguing that shortly after they moved in, the two named tenants are the only occupants of the rental unit. Both parties confirmed that since the June 4, 2021 notice was served there are the only two named tenants occupying the rental unit. The landlord stated that due to personal medical issues she does not possess any knowledge or evidence of there being an unreasonable number of occupants in the rental unit.

The landlord claims that the tenants have breached a material term of the tenancy agreement by repeatedly paying the rent late. The landlord argued that the tenants have been repeatedly served with numerous 10 Day Notice(s) and has been consistently late paying rent since February 2021.

The landlord claims that the tenants have sublet/assigned the rental unit without permission. The landlord clarified that this reason for cause was selected in reference to the original legal tenants based upon the original signed tenancy agreement. Discussions took place in which the landlord confirmed that she is not in possession of any knowledge or evidence that the two named tenants have sublet/assigned the rental unit.

### Analysis

Section 47(1)(b) of the Act permits a landlord to terminate a tenancy by issuing a 1 Month Notice in cases where a tenant has been repeatedly late paying rent.

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

In this case, both parties confirmed the landlord served the tenants with the 1 month notice dated June 4, 2021 by posting it to the rental unit door on June 4, 2021.

The landlord has provided undisputed affirmed evidence that the tenants have been repeatedly late paying rent since they occupied the rental unit between February/March of 2021 until the date of this scheduled hearing. The tenants have confirmed that she has been repeatedly late paying rent each month as claimed by the landlord. Both parties confirmed that there is no signed tenancy agreement. The tenants argue that she (N.S.) assumed that if she paid the rent by the 5<sup>th</sup> day after receiving each of the 10 Day Notice(s) that there would be no issue. Both parties confirmed that each 10 Day Notice specifically mentions that "You have 5 days to pay rent...to the landlord or file an application for dispute..."

Residential Tenancy Branch Policy Guideline #38, Repeated Late Payment of Rent states in part,

***The Residential Tenancy Act<sup>1</sup> and the Manufactured Home Park Tenancy Act<sup>2</sup> both provide that a landlord may end a tenancy where the tenant is repeatedly late paying rent.***

***Three late payments are the minimum number sufficient to justify a notice under these provisions.***

*It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments. However, if the late*

*payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be “repeatedly” late*

*A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.*

*In exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.*

*Whether the landlord was inconvenienced or suffered damage as the result of any of the late payments is not a relevant factor in the operation of this provision.*

In this case, I find based upon the undisputed affirmed evidence of both parties that the landlord has established that the tenants have been repeatedly late paying rent for the period February to October 2021, some 9 months. As such, I find that the landlord's reason for cause has been justified. The 1 month notice dated June 4, 2021 is upheld. The tenants' application to cancel the 1 month notice is dismissed without leave to reapply.

As the 1 month notice has been upheld the remaining reasons for cause need not be judged on their merits.

The landlord is granted an order of possession to be effective 2 days after it is served upon the tenants as the effective end of tenancy date has now passed.

The landlord is granted a monetary order for recovery of the \$100.00 filing fee.

### Conclusion

The landlord is granted an order of possession.

The landlord is granted a monetary order for \$100.00.

These orders must be served upon the tenants. Should the tenants fail to comply with these orders, the orders may be filed in the Supreme Court of British Columbia and the Small Claims Division of the Provincial Court of British Columbia and enforced as orders of those Courts.

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: October 08, 2021