



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, FFL

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

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

The landlord, P.B and her daughter/translator, E.B. (the landlord) attended the hearing via conference call and provided undisputed affirmed testimony. The landlord, B.B. did not attend and was not represented. E.B. stated that she would be translating in Punjabi for her mother. Both tenants did not attend or submit any documentary evidence.

The landlord was 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.

The landlord stated that the tenants were served with the notice of hearing package in person on July 22, 2021. The landlord stated the submitted documentary evidence was not served to the tenants. I accept the undisputed affirmed evidence of the landlord and find on a balance of probabilities that the tenants were properly served as per section 89 of the Act. Despite not attending the tenants are deemed served as per section 90 of the Act. On the landlord's evidence submission, I find that the landlord failed to comply with section 88 of the Act by not serving the submitted documentary evidence to the tenants. On this basis, the landlord's documentary evidence was excluded from consideration in this hearing. The hearing proceeded strictly based upon the landlord's direct testimony.

Issue(s) to be Decided

Are the landlords entitled to an order of possession for cause?

Are the landlords entitled to recovery of the filing fee?

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 applicant's claim and my findings are set out below.

The landlord provided undisputed affirmed testimony that on June 1, 2021, the landlord served the tenant with the 1 Month Notice dated June 1, 2021 in person. The 1 Month Notice sets out an effective end of tenancy date of June 30, 2021 and that it was being given as:

- the tenant is repeatedly late paying rent;
- the tenant has engaged in illegal activity that has, or is likely to:
  - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.
- Residential Tenancy Act Only: security or pet damage deposit was not paid within 30 days after the tenant received the order or the date in the order.

The landlord's details of cause state:

*The tenant, H.E., has been paying late for rent numerous times, the monthly rent that is due on the 1<sup>st</sup> is barely paid by the end of the month. There was a no smoking rule because I have elderly parents in the house and a 9 year old daughter, but H. lied and continued to smoke marijuana/cigarettes, it got so bad to the point it seemed like someone was smoking inside the suite because the whole house would smell very strongly like smoke. I do have text messages between tenant, H.E. and I.*

[reproduced as written]

The landlord was advised about proper service of the 1 month notice and that as it is dated and served on June 1, 2021 that the effective end of tenancy date was corrected to July 31, 2021 and that this does not void the 1 month notice dated June 1, 2021.

The landlord stated the tenants were late paying rent numerous times over a 4 month period between June 2021 to October 2021 but was not able to provide any details.

The landlord stated that the tenants engaged in illegal activity that adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord but was unable to provide any details.

At 11:34am the landlord was suddenly disconnected from the conference call. The hearing was suspended to await the landlord to reconnect.

The landlord failed to re-connect to the conference call hearing and at 11:59am the conference call hearing was ended.

### 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.

Despite the landlord claiming that the tenants were repeatedly late paying rent, no details were provided by the landlord for this reason for cause. On this basis, this reason for cause was dismissed without leave to reapply for lack of evidence to support the claim.

Section 47 (1)(e) of the Act permits a landlord to terminate a tenancy by issuing a 1 Month Notice in cases where a tenant or a person permitted on the property by the tenant has engaged in illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

Despite the landlord claiming that the tenants engaged in illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord, no details were provided by the landlord for this reason for cause. On this basis, this reason for cause was dismissed without leave to reapply for lack of evidence to support the claim.

Section 47 (1) (h) of the Act permits the landlord to terminate a tenancy by issuing a 1 Month Notice in cases where a tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so. In this case the tenant failed to pay the security deposit within 30 days as required by the tenancy agreement.

The landlord was suddenly disconnected from the conference call hearing at 11:34am. The hearing was held open until 11:59am when it was closed. The landlord failed to reconnect and as such no details were provided regarding this reason for cause. On

this basis, the merits for this reason for cause were not considered and was dismissed with leave to reapply on this reason only. Leave to reapply is not an extension of any applicable limitation period.

Conclusion

The landlord's application is dismissed.

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: November 2, 2021

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Residential Tenancy Branch