



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Welbec Quesnel Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      FFT, CNC, MNDCT, CNR

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on August 3, 2021 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order to cancel a One Month Notice to End Tenancy dated July 31, 2021 (the "One Month Notice");
- an order to cancel a 10 Day Notice for Unpaid rent or Utilities dated August 18, 2021, and October 21, 2021 (the "10 Day Notices");
- a monetary order for money owed for damage or compensation; and
- an order granting the return of the filing fee.

The Tenant R.C., the Tenants' Advocate M.G., and the Landlord's Agents; P.K., R.S., and K.G. attended the hearing at the appointed date and time. At the start of the hearing, the parties confirmed service and receipt of their respective Application and documentary evidence packages. No issues were raised during the hearing with respect to service and receipt of the above documents. Accordingly, pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules of Procedure). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Residential Tenancy Act* (*Act*) requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord I must consider if the Landlord is entitled to an order of possession

if the Application is dismissed and the Landlord has issued a notice to end tenancy that is compliant with the *Act*.

### Preliminary and Procedural Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important issue to determine is whether or not the tenancy is ending in relation to the multiple Notices to End Tenancy. As such, the Tenant's request for a monetary order for money owed for damage or compensation is dismissed with leave to reapply.

### Issue(s) to be Decided

1. Are the Tenants entitled to an order cancelling the One Month Notice, pursuant to Section 47 of the *Act*?
2. Are the Tenants entitled to an order cancelling the 10 Day Notices, pursuant to Section 46 of the *Act*?
3. Are the Tenants entitled to an order granting the return of the filing fee, pursuant to Section 72 of the *Act*?
4. If the Tenants are not successful in cancelling the One Month Notice or the 10 Day Notices, is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?

### Background and Evidence

The parties testified and agreed to the following; the tenancy began on April 1, 2019. Currently, the Tenant is paying rent in the amount of \$821.00 which is due on the first day of each month. The Tenant stated that he should only be paying \$800.00 a month as a result of the Landlord issuing a rent increase which took effect during the rent freeze. The parties agreed that the Tenant paid a security deposit in the amount of \$400.00 which the Landlord continues to hold.

The Landlord's Agents testified that the Tenants have been repeatedly late paying rent since June 2020. The Landlord provided a detailed rent ledger in support which

indicates when the rent is expected, compared to when the Tenants made a rent payment to the Landlord. The Landlord's Agents stated that they subsequently served the Tenants in person on July 31, 201 with a One Month Notice dated July 31, 2021 with an effective vacancy date of August 31, 2021. The Landlord's reason for ending the tenancy on the One Month Notice is;

*"Tenant is repeatedly late paying rent"*

The Tenant confirmed receiving the One Month Notice on July 31, 2021. The Tenant stated that the Landlord's rent ledger is not accurate. The Tenant stated that he made a cash rent payment to the Landlord on December 8, 2020 and asked for a receipt from the Landlord by text message on December 15, 2020. The Tenant stated that the Landlord did not reflect the rent payment in December 2020 on the rent ledger. As such, the Tenant stated that he was ahead on his rent payments throughout 2021 and therefore, not late.

The Landlord's Agents stated that they did not receive a rent payment from the Tenant in December 2020 and that there was no text message sent to the Landlord for a receipt. The Landlord's Agents stated that a cash rent payment receipt has always been provided to the Tenant during past cash transactions.

The Tenant's Advocate question the Landlord's credibility with respect to not acknowledging the Tenant's text message and also denying that there had been an addendum to the tenancy agreement.

### Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

According to Section 47 (1) of the Act, a landlord may end a tenancy by giving notice to end the tenancy for cause.

The Residential Tenancy Policy Guideline 38 states 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.

Section 26 of the Act explains that the Tenant must pay rent when it is due under the Tenancy Agreement, whether or not the Landlord complies with this *Act*.

The Landlord served the Tenants with a One Month Notice to End Tenancy for Cause dated July 31, 2021. The Tenant confirmed having received the notice on the same date. I find the One Month Notice was sufficiently served pursuant to Section 88 of the Act.

The Landlord has submitted a detailed rent ledger which indicates that the Tenants have made partial rent payments to the Landlord throughout each month starting in June 2020 until December 2021. The Tenant stated that he has made a cash rent payment to the Landlord in December 2020 which was not recorded and that he did not receive a rent receipt for. It is the Tenant's position that he is ahead on his rent payments as a result of the December 2020 payment, therefore, not late during the partial rent payments made throughout 2021.

While the Tenant stated that he paid the rent in cash to the Landlord on December 8, 2020, I find that the rent for December was due on December 1, 2020. Furthermore, this does not explain the partial rent payments made before December 2020 which includes; \$780.00 on July 31, 2020 for August rent, partial payments on October 1 (\$475.00), 13 (\$325.00), 14 (22.00), 2020, and \$700.00 on November 29, 2020 in addition to the alleged late rent payment as stated by the Tenant on December 8, 2020.

I find that the Tenants have provided insufficient evidence to demonstrate that they paid rent to the Landlord for December 2020. I find that the Tenants have developed a habit of paying rent late commencing in August of 2020 which consisted of partial rent payments made to the Landlord throughout the months leading up to the Landlord serving the One Month Notice. I find that after receiving the One Month Notice the Tenants continue to pay the rent late each month.

I find that the Landlord has submitted sufficient evidence to demonstrate that the Tenants have paid rent late on more than three occasions. As such, I dismiss the Tenant's Application to cancel the One Month Notice dated July 31, 2021 without leave to reapply.

When a tenant's application to cancel a notice to end tenancy is dismissed, and the notice complies with section 52 of the *Act*, section 55 of the *Act* requires that I issue an order of possession in favour of the Landlord. Having reviewed the One Month Notice, I find it complies with section 52 of the *Act*. Accordingly, I grant the Landlord an order of possession, which will be effective two (2) days after service on the Tenants.

Conclusion

The Tenants' Application is dismissed as I have found they have been repeatedly late paying rent. As such, I grant the Landlord an Order of Possession to be two (2) days after the Order is served to the Tenants. Should the Tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: December 07, 2021

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Residential Tenancy Branch