



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Success Realty  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **CNC-MT**

### **Introduction**

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

1. Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to Section 47 of the Act; and,
2. More time to dispute the notice pursuant to Section 66 of the Act.

The hearing was conducted via teleconference. The Landlord's Property Manager, JE, the Tenant, JW, and Tenant's Support, RP, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlord served the Tenant with the One Month Notice via registered mail on October 22, 2021. JE referred me to the Canada Post registered mail tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Tenant testified that he was alerted by email that the One Month Notice was served. I find that the One Month Notice was served on the Tenant on October 27, 2021 pursuant to Sections 88(c) and 90(a) of the Act.

The Tenant confirmed that he served the Landlord with the Notice of Dispute Resolution Proceeding package for this hearing by using a permitted email address for service on

November 17, 2021 (the “NoDRP package”). The Landlord confirmed receipt of the NoDRP package on November 17, 2021. I find that the Landlord was served with the NoDRP package for this hearing on November 17, 2021, in accordance with Section 43(2) of the Residential Tenancy Regulation.

### Preliminary Matter

The Tenant’s application was seeking more time to dispute the One Month Notice. The Tenant applied for dispute resolution on November 5, 2021, and at that time he felt he needed more time. As of today’s date, the Tenant confirmed he is no longer seeking additional time to prepare for his application. The Tenant confirmed he does not need more time any longer.

### Issues to be Decided

1. Is the Tenant entitled to a cancellation of the Landlord’s One Month Notice?
2. If the Tenant is unsuccessful, is the Landlord entitled to an Order of Possession?

### Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed this periodic tenancy began on April 1, 2011. Monthly rent is \$850.00 payable on the first day of each month. A security deposit of \$362.50 was collected at the start of the tenancy and is still held by the Landlord.

The reason on the Landlord’s One Month Notice was the Tenant is repeatedly late paying rent. The effective date on the One Month Notice was November 30, 2021. The Landlord also submitted into its documentary evidence of two 10 Day Notices to End Tenancy For Unpaid Rent or Utilities.

The Landlord testified that over the past year, rent was received on the following dates:

Month	Date Rent Paid
January 2021	on time
February 2021	February 8, 2021
March 2021	March 16, 2021
April 2021	on time
May 2021	May 12, 2021
June 2021	June 7, 2021
July 2021	July 20, 2021
August 2021	on time
September 2021	September 14, 2021
October 2021	October 19, 2021
November 2021	November 4, 2021
December 2021	December 10, 2021
January 2022	January 6, 2022

The Tenant testified over more than the past year, he has had difficulty finding a permanent job. For a period of time, he was collecting employment insurance. He maintained that the payment dates for employment insurance did not coincide with his rent payment due dates. He states he now has full time employment, and going forward he does not anticipate difficulties paying his rent on time.

The Property Manager said his instructions are to seek an Order of Possession for repeatedly late rent payments. JE stated that the Tenant is paid up to the end of January, 2022.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Section 26(1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 47 of the Act outlines how a tenancy can end for cause:

47 (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*

...

(b) *the tenant is repeatedly late paying rent;*

...

(3) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*

(4) *A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.*

...

Residential Tenancy Policy Guideline #38 provides a statement on the policy intent of the legislation in regard to repeatedly late rent payments. It states:

...

*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.*

The Tenant has been late paying rent 10 times in the last 13 months. The Landlord has served two 10 Day Notices for Unpaid Rent on the Tenant in this time period. Even though the Tenant now has a full time job, the Property Manager said he is seeking an Order of Possession. I find that the Tenant has been late over the requisite number of times to constitute being repeatedly late paying rent. The Landlord has proven their claim on a balance of probabilities, and I uphold their One Month Notice. The Tenant's application to cancel the Landlord's One Month Notice is dismissed without leave to re-apply.

As the Tenant's application is unsuccessful, Section 55 of the Act specifies how the Landlord is entitled to an Order of Possession:

- 55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*
- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*
  - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

I find that the One Month Notice submitted into documentary evidence complies with Section 52 of the Act. As I have dismissed the Tenant's application and upheld the Landlord's One Month Notice, I grant an Order of Possession to the Landlord which will be effective on January 31, 2022 at 1:00 p.m.

### Conclusion

The Landlord is granted an Order of Possession which will be effective on January 31, 2022 at 1:00 p.m. The Landlord must serve this Order on the Tenant as soon as

possible. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the British Columbia Supreme Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: January 24, 2022

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Residential Tenancy Branch