



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, OLC, AS, RP, FFT

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a One Month Notice to End Tenancy for Cause dated August 23, 2021 ("One Month Notice"), for an order directing the landlord to comply with the Act, regulation or tenancy agreement; for an order to allow an assignment or sublet when permission has been unreasonably denied; for an Order for repairs to the unit, site or property, having contacted the landlord in writing to make repairs, but they have not been completed; and to recover the \$100.00 cost of her Application filing fee.

The Tenant and an agent for the Landlord, J.W. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenant and the Agent were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

### Preliminary and Procedural Matters

The Tenant provided her email address in the Application, and the Agent provided the Landlord's email address in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

I also advised the Parties that Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this situation, the Tenant indicated different matters of dispute on the application, the most urgent of which is the application to set aside a One Month Notice. I find that not all the claims on the Application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the Tenant's request to set aside the One Month Notice and the recovery of the filing fee at this proceeding. Therefore, the Tenant's other claims are dismissed, with leave to re-apply, depending on the outcome of this hearing.

#### Issue(s) to be Decided

- Should the One Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?
- Is the Tenant entitled to recovery of her \$100.00 Application filing fee?

#### Background and Evidence

The Parties agreed that the periodic tenancy began on January 1, 2017, with a monthly rent of \$1,000.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$500.00, and no pet damage deposit.

The Landlord submitted a copy of the One Month Notice that was served to the Tenant. The One Month Notice was signed and dated August 23, 2021, it has the rental unit address, it was served in person on August 23, 2021, with an effective vacancy date of September 30, 2021. The One Month Notice was served on the grounds that

- the Tenant is repeatedly late paying rent;
- the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord;
- the 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;

- the Tenant or a person permitted on the property by the Tenant has caused extraordinary damage to the unit or property;
- a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so; and
- the Tenant has assigned or sublet the rental unit/property without the Landlord's written consent.

In the hearing, the Agent directed my attention to an account ledger for the Tenant's rent payments that he had submitted. The Agent said: "If you look at my evidence package, it shows that five times in 2021 the Tenant was late in paying rent."

The Tenant responded:

I'm looking at the ledger, and because of him sending the booklet so late, I didn't get some evidence in proving that the ledger is wrong. I've never paid by cheque. I've always paid by cash at the office. I have rent receipts paid by cash at the office. There was two 10 Day Notice that I requested, because once my wallet was stolen and I had to go to the Ministry, another time my grandson had bought games online and had to go to the Ministry again to get my rent paid. I don't know about the other ones. This ledger is not mine. I don't even have a chequing account.

The Landlord explained that the reference to "Cheque" in the ledger is a standard term in all their ledgers for any type of payment. In another column on the ledger, it indicates that the Tenant actually used cash to pay the rent. As such, I find that the Tenant has not, in fact, prove that the ledger is wrong.

The ledger shows that the Tenant was late paying rent in January 2021, February 2021, March 2021, August 2021, and October 2021.

### Analysis

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

Section 26 of the Act sets out that a tenant must pay rent when it is due:

### **Rules about payment and non-payment of rent**

**26** (1) 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.

There is no evidence before me that the Tenant had a right to deduct all or a portion of the rent. Section 47 of the Act authorizes a landlord to end a tenancy for repeated late payment of rent:

**Landlord's notice: 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;

Policy Guideline 38, "Repeated Late Payment of Rent" ("PG #38"), explains that, absent any exceptional circumstances (such as a bank error through no fault of the tenant), three instances of late payment of rent are the minimum number of instances of late payments required to support this type of Notice to End Tenancy.

When I consider the evidence before me overall, I find that the Tenant failed to pay her rent on time on five occasions in 2021. The Tenant provided reasons for two of the late payments, which leaves three unexplained late payments.

Pursuant to section 47 of the Act and PG #38, I find that the Landlord has provided sufficient evidence to prove the validity of the One Month Notice on a balance of probabilities. I also find that the One Month Notice complies with section 52 of the Act, as to form and content.

Accordingly, and pursuant to section 55 of the Act, I grant the Landlord an Order of Possession for the rental unit. Given that the effective vacancy date has passed, the **Order of Possession will be effective two days** after the Tenant receives the Order.

Given this conclusion, I find there is no need to analyze the Landlord's other grounds for the One Month Notice.

The Tenant's Application is dismissed wholly without leave to reapply.

### Conclusion

The Tenant is unsuccessful in her Application, as the Landlord provided sufficient evidence to establish the validity of the One Month Notice on a balance of probabilities. The Tenant's Application is dismissed wholly without leave to reapply.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible.

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

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: January 12, 2022

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Residential Tenancy Branch