



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, CNC, RP, OLC, FFT

### Introduction

The tenant applied to dispute a One Month Notice to End Tenancy for Cause (the "Notice") pursuant to section 47(4) of the *Residential Tenancy Act* ("Act"). In addition, they applied for additional relief under sections 32 and 62 (repairs), 65 (landlord compliance), 67 (compensation), and 72 (recovery of application filing fee) of the Act.

A hearing was convened on January 31, 2022 at 11:00 AM and only the respondent landlord attended. The tenant did not attend the hearing which ended at 11:12 AM. (The landlord commented that she observed the tenant leave the property about thirty minutes before the hearing.)

It should be noted that the tenant never served a copy of the Notice of Dispute Resolution Proceeding on the landlord, nor did he serve or submit any documentary evidence on either the landlord or the Residential Tenancy Branch.

### Issues

1. Is the tenant entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession?
3. Is the tenant entitled to recover the cost of the application filing fee?

### Background and Evidence

The landlord testified under oath that monthly rent is \$2,100.00 plus utilities. Rent is due on the first day of the month. The tenant paid a security deposit of \$1,050.00 and a pet damage deposit of \$1,050.0, both of which the landlord currently holds in trust. There is a written tenancy agreement in evidence.

While a copy of the Notice was not submitted into evidence, the landlord had a copy in front of her. The landlord testified that the Notice was served on the tenant in-person on September 7, 2021. On page two of the Notice the ground for issuing the Notice was that the tenant was repeatedly late paying rent. In the details of cause section, the landlord detailed that the tenant was late paying rent on March 5, June 11, July 9, and September 3, 2021. The landlord confirmed this information, under oath, in the hearing.

Copies of bank statements and Interac e-transfer documentation was submitted into evidence by the landlord in support of the repeated late payment reason given.

### 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 One Month Notice to End Tenancy for Cause, however, the onus is on the landlord to prove, on a balance of probabilities, the ground on which the Notice was given.

Section 47(1)(b) of the Act permits a landlord to end a tenancy when “the tenant is repeatedly late paying rent.” In this dispute, the landlord issued the Notice on the ground that the tenant was repeatedly late paying rent.

*Residential Tenancy Policy Guideline 38 “Repeated Late Payment of Rent,” version April 2004*, clarifies and explains, *inter alia*, that

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

Here, the tenant made four late payments all within a seven-month span in 2021. The landlord’s documentary evidence supports these facts. As such, it is my finding that the tenant was repeatedly late paying rent as contemplated by the Act.

Taking into consideration the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving a section 47(1)(b) ground for issuing the Notice to end the tenancy.

Having reviewed the information contained in the Notice as conveyed to me by the landlord during the hearing, it is my finding that the Notice complied with section 52 of the Act in form and content.

The tenant's application to cancel the Notice is dismissed without leave to reapply.

Pursuant to section 55(1)(b) of the Act the landlord is granted an order of possession of the rental unit. A copy of this order is issued in conjunction with this decision, to the landlord. It is incumbent upon the landlord to serve a copy of this order of possession on the tenant should he not end up vacating the rental unit as anticipated.

As the tenant did not attend the hearing to address the other claims for relief made in his application, those remaining claims are dismissed without leave to reapply.

### Conclusion

**The tenant's application is dismissed without leave to reapply.**

**The landlord is granted an order of possession of the rental unit.**

This decision is final and binding on the parties, and it is made on delegated authority under section 9.1(1) of the Act. A party's right to appeal this decision is limited to grounds provided under section 79 of the Act or by way of an application for judicial review under the *Judicial Review Procedure Act*, RSBC 1996, c. 241.

Dated: January 31, 2022

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Residential Tenancy Branch