



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, OLC

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy and for an order to have the landlord comply with the *Residential Tenancy Act (Act)*, regulation, or tenancy agreement.

The hearing was conducted via teleconference and was attended by the tenant, both landlords and their agent

The tenant testified the landlord was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by posting on the landlord's door on December 3, 2021 in accordance with Section 89. The landlord acknowledged receipt of the tenant's package on December 3, 2021.

The landlord testified that they served the tenant by email and in person on January 4, 2022. The landlord testified they were not aware of the 7-day requirement to serve evidence. The tenant acknowledged receipt of the landlord's evidence. He stated that he had been able to review the evidence and was prepared to proceed with the hearing. As such, I allow the late service, as I find no prejudice to the tenant.

Residential Tenancy Branch Rule of Procedure 4 outlines the requirements for considering amendments to an Application for Dispute Resolution.

Rule 4.1 states that an applicant may amend a claim by completing an Amendment to an Application for Dispute Resolution form and filing the completed Amendment to an Application for Dispute Resolution form and supporting evidence with the Residential Tenancy Branch or through a Service BC Office. It goes on say an amendment may add to, alter or remove claims made in the original application.

Rule 4.2 stipulates that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an

amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

In the case before me, the tenant has applied, among other things, to dispute a 10 Day Notice to End Tenancy for Unpaid Rent. However, in his evidence the tenant submitted a copy of a One Month Notice to End Tenancy for Cause. I also note the landlord acknowledges, in their evidence, that the tenant received a One Month Notice and not a 10 Day Notice and have addressed all of their evidence to deal with the issues outlined in the One Month Notice.

As such, I find there is no prejudice to the landlord, as it could reasonably be expected that the amendment to an application to dispute a One Month Notice to End Tenancy for Cause would occur at the hearing. As such, I amend the tenant's Application to exclude the issue of cancelling a 10 Day Notice to End Tenancy for Unpaid Rent and include the issue of seeking to cancel a One Month Notice to End Tenancy for Cause.

I note that because this is an Application for Dispute Resolution submitted by the tenants seeking to cancel a notice to end tenancy issued by the landlord, Section 55 of the *Act* requires I issue an order of possession to the landlord if the landlord's notice complies Section 52 of the *Act* and I either dismiss the tenant's application or uphold the landlord's notice to end tenancy.

#### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a One Month Notice to End Tenancy for Cause, pursuant to Section 47 of the *Act*.

Should the tenant fail to succeed in cancelling the One Month Notice to End Tenancy for Cause, it must be determined if the landlord is entitled to an order of possession, pursuant to Sections 52 and 55 of the *Act*.

#### Background and Evidence

The parties agree the tenancy began as a one-year fixed term tenancy that converted to a month-to-month tenancy for a current monthly rent of \$950.00 due on the 1<sup>st</sup> of each month with a security deposit of \$475.00 paid. However, the parties could not recall the exact start date of the tenancy but did agree it started at least in 2010.

While the tenant had submitted a copy of a One Month Notice to End Tenancy for Cause, not all of the details were readable on the version that was accessible to me, so I had the parties confirm the details of the causes listed on the Notice. The One Month Notice to End Tenancy for Cause was issued by the landlord on November 22, 2021 with an effective vacancy date of December 31, 2021 citing the tenant is repeatedly late paying rent; the tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site/property/park; and the tenant has not done

required repairs of damage to the unit/site/property/park. The tenant acknowledged receipt of the Notice on November 25, 2021.

The parties agreed that over the course of several years the tenant has paid rent late on a number of occasions. The tenant explained that in some cases he had to pay rental arrears each month which meant that between the payment of arrears and the payment of a current month's rent he was unable to do both.

For example, after the landlord issued the One Month Notice the tenant provided evidence that he paid the landlord, by e-transfer on November 26, 2021, \$2,200.00 which included rent for December (payment in advance) as well as previous arrears in the amount of \$1,250.00 (\$950.00 for November 2021 and \$300.00 for October 2021). The landlord also confirmed the tenant had paid rent for January 2021 on January 15, 2021.

The landlord provided additional documentation for late payments for other months during 2018; 2019; 2020 and 2021. Some examples include:

- In an email dated December 9, 2021 the tenant wrote: "I deposited \$950.00 yesterday December 8<sup>th</sup>....and will deposit another \$950.00 on December 22<sup>nd</sup> and again on January 5<sup>th</sup>...." While it is not clear which months the rent is owed for it is clear that the payments are for rent being "caught up" over a period of at least 2 months;
- On September 16, 2019 the tenant wrote: "Hi Shirley, I will be putting in September rent on Monday the 23<sup>rd</sup>, October and August rent on Tuesday October 8, November and July on Wednesday October 23<sup>rd</sup>...." and
- On February 3, 2021 the tenant wrote: "I'll send you full months pay on Feb 12 (for February) plus the remainder for December (\$450)...." with a response from the landlord dated February 25, 2021 where she wrote: "I have NO RENT for Feb and no back rent. March due March 1/21. You are way behind again. Money ASAP with explanation.

The landlord also seeks to end the tenancy based on extraordinary damage to the property and the tenant's failure to make required repairs. The landlord submitted several pictures of the condition of the yard prior to the issuance of the One Month Notice to End Tenancy on November 22, 2021. The landlord provided that despite repeated requests over several years the tenant has failed to comply with his promises to repair damage to the yard.

The landlord submitted that the yard used to consist of a lawn which is now overgrown and is strewn with debris. The landlord also noted the condition of the interior of the house and that it mirrors the condition of the exterior of the property. The landlord estimates "tens of thousands of dollars (\$50,000 estimated) and at minimum 3 months of repairs...."

The tenant provided a photograph of the condition of the year since he has received the Notice to End Tenancy and a receipt from "1-800-GOT-JUNK?" in the amount of \$627.90 for service received on December 3, 2021 for the removal of yard debris.

### Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if, among other reasons, one or more of the following applies:

- a) The tenant is repeatedly late paying rent;
- b) The tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to the rental unit or residential property;
- c) The tenant does not repair damage to the rental unit or other residential property, as required under section 32(3), within a reasonable time.

Section 47(4) allows a tenant to dispute a notice under Section 47 by making an application for dispute resolution within 10 days after the date the tenant **receives** the notice. The tenant submitted, on his Application for Dispute Resolution that he received the Notice to End Tenancy on November 25, 2021. As such, I find the tenant had until December 6, 2021 to submit an Application for Dispute Resolution seeking to cancel the 1 Month Notice. The tenants' Application was submitted on November 26, 2021. As a result, I find the tenant has submitted his Application within the required timeframe.

Residential Tenancy Policy Guideline #38 states that three late payments are the minimum number sufficient to justify a notice under these provisions. The guideline goes on to say that it does not matter whether the late payments are consecutive, however if the late payments are far apart an arbitrator may determine that the tenant cannot be said to be repeatedly late.

From the submissions of both parties I am satisfied, on a balance of probabilities, that the tenant has been late paying rent a significant number of times over the course of the tenancy and in particular over the years of 2018, 2019, 2020, and 2021. I am also satisfied the landlord has established that the tenant has failed to pay rent on time for, at least, the months of January, February, October, and November 2021.

As such, I find the landlord has established the tenant has failed to pay rent on at least three occasions within the last year. Therefore, I find the landlord has cause to end the tenancy. As the landlord has established repeated late payment of rent I make no findings on the other causes identified on the Notice to End Tenancy.

Based on the above, I dismiss the tenant's Application for Dispute Resolution in its entirety.

Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

I find the One Month Notice to End Tenancy for Cause issued by the landlord on November 22, 2021 complies with the requirements set out in Section 52.

Section 55(1) of the *Act* states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the *Act*.

As I have dismissed the tenant's Application seeking to cancel the One Month Notice and the Notice complies with Section 52, I must issue the landlord an order of possession. I note that the parties confirmed the tenant has paid rent for the month of January 2022 and as a result, I will order the tenancy to end on January 31, 2022.

### Conclusion

I find the landlord is entitled to an order of possession effective **January 31, 2022 after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that 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 *Residential Tenancy Act*.

Dated: January 06, 2022

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Residential Tenancy Branch