



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, FFT

### Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

During the hearing both parties confirmed that the named landlord was made in error as S.J. When in fact the landlord is A.H. and that S.V. is the landlord's agent as per a signed copy of the tenancy agreement. Both parties consented to the tenants' application being amended to reflect the landlord as A.H.

Both parties confirmed the tenants served the landlord with the notice of hearing package via email on September 16, 2021. The tenants stated that the submitted 8 documentary evidence files were included with the emailed service. The landlord disputes this arguing that only 3 attachments consisting of the notice of hearing package were included and received. The tenants referenced an evidence file "Proof of Dispute Served" as confirmation of service. A review of this file shows a screenshot of an email dated September 18, 2021 however it shows only 3 attachments included which consist of the notice of hearing package only. The tenants repeated that the

evidence was served via this email. I find based upon the above evidence that both parties have been sufficiently served with the notice of hearing package via email and the landlord's submitted documentary evidence are deemed served as per section 90 of the Act. I also find the tenants' evidence submission is excluded on a balance of probabilities that no evidence was submitted with the notice of hearing package via email based upon the copy of the referenced email of the tenant as no additional evidence attachments are noted.

### Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 1 month notice?  
Are the tenants entitled to recovery of the filing fee?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties confirmed that on August 27, 2021, the landlord served the tenants with the 1 Month Notice dated August 27, 2021 by posting it to the rental unit door. The 1 Month Notice sets out an effective end of tenancy date of September 30, 2021 and that it was being given as:

- the tenant is repeatedly late paying rent;

The details of cause state:

*Rent has been paid late for Dec 2019, Jan 2020, Mar2020, Jul 2020, Oct 2020, Nov 2020, Dec 2020, Jan 2021, Feb 2021, Mar 2021, April 2021, Jun 2021 and July 2021. Numerous warnings were given to S. and her mother, C.s., via text, email and telephone (I did not have B.'s contact information and requests for his number were ignored). Tenants did not apply for rent relief during COVID lockdown in 2020 (I proved all information to them about these relief benefits) and arrangements were made with S. for rent payments to be split in a couple payments throughout the month instead of one single payment due on the first. Those months were not taken into consideration or included in the list above considering the events that were happening throughout the world that time. B. has indicated that he was not aware that the rent was paid late.*

*At the end of July 2021 and in early August 2021 S., C. and B. notified me that S. was moving out of the home (likely by the end of September 2021) as her and B. have ended their relationship. B. has indicated that he would like to stay at the home and bring in a roommate. Considering the signed addendum (signed oct 22, 2018) states that the tenants needs to obtain permission for another occupant to move in and the fact that this tenant/landlord relationship has become strained due to ongoing late rent payment issues and lacking communication. I told B. that he would need to complete an application for himself and the potential roommate so I can complete updated thorough reference and background checks. I requested both email addresses to pass on the application. B. gave me his friend's email address but ignored my 3 requests for his own email address. Due to all of the information stated above I have decided to proceed with an eviction, with the property being vacated by September 30, 2021.*

The landlord provided direct testimony which states that out of a 39 month rental history since November 2018, the tenants have been repeatedly late paying rent in 23 of those months. The landlord referenced submitted copies of emails/text messages notifying the tenants of the repeatedly late rent payments and how this was not acceptable. The landlord clarified that in August 2021, the landlord was no longer willing to tolerate the repeated late payments of rent.

The tenants stated that they have always paid the rent in full, and that the landlord has never issued a notice for unpaid rent. Both tenants stated during covid they have never opted for rent relief. The tenant, B.K. disconnected from the conference call hearing at 10:24am. The remaining parties were informed that the hearing was paused to allow the tenant, B.K. to re-connect. At 10:29am the hearing was concluded in the absence of the tenant, B.K. The tenant, S.F. stated that she did not know what had happened and cannot think of anything further to present regarding the application.

### Analysis

Section 47(1)(b) of the Act permits a landlord to terminate a tenancy by issuing a 1 Month Notice in cases where a tenant has been repeatedly late paying rent.

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

In this case, the landlord provided undisputed affirmed evidence that the tenants were served with the 1 month notice dated August 27, 2021 by posting it to the gate of the rental unit.

Residential Tenancy Branch Policy Guideline #38, Repeated Late Payment of Rent states in part,

*The Residential Tenancy Act<sup>1</sup> and the Manufactured Home Park Tenancy Act<sup>2</sup> both provide 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.*

*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...*

*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 landlord provided undisputed evidence that the tenants have had a 39 month rental history in which the tenants have been repeatedly late paying rent in 23 out of those months, despite repeated emails/text messages warning the tenants of paying rent late. The landlord had referenced several emails/text messages in which the landlord was forced to “chase” after the rent from the tenants. On this basis, I find that the landlord was provided sufficient evidence to satisfy me that the tenants have been repeatedly late paying rent. The tenants’ application to cancel the 1 month notice is dismissed without leave to reapply. The 1 month notice dated August 27, 2021 is upheld. The landlord is granted an order of possession to be effective 2 days after it is served upon the tenants as the effective end of tenancy date has now passed.

### Conclusion

The landlord is granted an order of possession.

This order must be served upon the tenants. Should the tenants fail to comply with this order, the order may be filed in the Supreme Court of British Columbia and 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 18, 2022