



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **CNC-MT, CNR-MT**

### Introduction

This hearing dealt with the Tenant's repeated applications 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 Sections 47 and 62 of the Act;
2. Cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to Section 46(1) of the Act; and,
3. More time to dispute the notice pursuant to Section 66 of the Act.

The hearing was conducted via teleconference. The Landlord, IST, and Support, JHH, attended the hearing at the appointed date and time and provided affirmed testimony. The Tenant did not attend the hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord, JHH and I were the only ones who had called into this teleconference. The Landlord was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Landlord and JHH that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The Landlord and JHH testified that they were not recording this dispute resolution hearing.

The Landlord served the Tenant with the One Month Notice via registered mail on September 25, 2021. JHH 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. I find that the One Month Notice was deemed served on the Tenant on September 30, 2021 pursuant to Sections 88(c) and 90(a) of the Act.

The Landlord served the Tenant with the 10 Day Notice via registered mail on November 3, 2021. JHH 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. I find that the 10 Day Notice was deemed served on the Tenant on November 8, 2021 pursuant to Sections 88(c) and 90(a) of the Act.

The Tenant served the Landlord the Notice of Dispute Resolution Proceeding package for this hearing via Canada Post registered mail on December 10, 2021 (the “NoDRP package”). JHH provided me with the Canada Post registered mail tracking number as proof of service. The Landlord confirmed receipt of the NoDRP package. I noted the registered mail tracking number on the cover sheet of this decision. I find that the Landlord was deemed served with the NoDRP package for this hearing five days after mailing them, on December 15, 2021, in accordance with Sections 89(1)(c) and 90(a) of the Act.

### Preliminary Matter

RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment 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. On this basis, I accept the Landlord’s request to amend their original application from \$2,700.00 to \$8,100.00 to reflect the unpaid rent that became owing by the time this hearing was convened.

### Issues to be Decided

1. Is the Tenant entitled to cancellation of the Landlord’s One Month Notice?
2. Is the Tenant entitled to cancellation of the Landlord’s 10 Day Notice?
3. If the Tenant is unsuccessful, is the Landlord entitled to an Order of Possession and a Monetary Order for unpaid rent?
4. Is the Tenant entitled to more time to dispute the notice?

### 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.

This fixed term tenancy began on March 1, 2021. The fixed term ends on February 28, 2022. Monthly rent is \$1,800.00 payable on the first day of each month. A security deposit of \$900.00 was collected at the start of the tenancy. The Tenant was to pay a \$900.00 pet damage deposit at the start of the tenancy, but the Landlord has only received \$550.00 of the pet damage deposit. The Landlord still holds \$1,450.00 in trust for the Tenant.

The reasons on the One Month Notice to end this tenancy are the Tenant is repeatedly late paying rent, and the security or pet damage deposit was not paid within 30 days as required by the tenancy agreement. Additional details for cause are:

*Late payments all the time.(Every month from the second month of tenancy)*

*Bylaw violation and not responding to strata to resolve the issue.*

*I. Dispose furniture at common area.*

*II. Having the type/breed of dog that is not allowed by strata. Fail to proof the dog is her service dog.*

The effective date of the One Month Notice is October 31, 2021.

The reason on the 10 Day Notice states the Tenant failed to pay rent in the amount of \$2,700.00 due on November 1, 2021. The effective date on the 10 Day Notice is November 15, 2021.

The Landlord testified that the Tenant has paid rent late every month during this tenancy. At one point, the Landlord offered a payment plan schedule starting in June 2021 and that seemed to work out for three months, although the rent payments were still late according to the payment plan. The Tenant has not paid all of October 2021's rent, and nothing has been received since then. Rent monies received are as follows:

<b>RENT</b>	Rent Owing	Rent/Partial Amount Paid	O/S Rent Total
October 2021	\$1,800.00	\$525.00	\$1,275.00
October 6		\$375.00	\$900.00
November 2021	\$1,800.00	\$0.00	\$2,700.00
December 2021	\$1,800.00	\$0.00	\$4,500.00
January 2022	\$1,800.00	\$0.00	\$6,300.00
February 2022	\$1,800.00	\$0.00	\$8,100.00
<b>TOTAL OUTSTANDING RENT:</b>			<b>\$8,100.00</b>

The Landlord is seeking an Order of Possession and a Monetary Order for \$8,100.00 for the outstanding rent.

### 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. As this hearing was conducted pursuant to Rules of Procedure 7.3, in the Tenant's absence, all the Landlord's testimony is undisputed.

Section 26(1) of the Act states 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 unpaid 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:*
- (a) *the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;*

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

...

*(2) A notice under this section must end the tenancy effective on a date that is*

*(a) not earlier than one month after the date the notice is received, and*

*(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*

*(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.*

*(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant*

*(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and*

*(b) must vacate the rental unit by that date.*

The Landlord's One Month Notice was deemed served on September 30, 2021. The Tenant had 10 days after receiving the One Month Notice, October 10, 2021, to apply for dispute resolution. The Tenant did not apply for dispute resolution until November 12, 2021.

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 Landlord tried to make a rent payment plan that would assist the Tenant; however, once implemented the Tenant still made rent payments late. I find that the Landlord has not received the final \$350.00 for the pet damage deposit in this tenancy. I also find that the Landlord has not waived reliance on Policy Guideline #38, and the Tenant has been repeatedly late paying rent pursuant to the tenancy agreement. I find the One Month Notice submitted into documentary evidence complies with Section 52 of the Act. In the absence of evidence from the Tenant, I find that the Tenant is conclusively presumed under Section 47(5)(a) of the Act to have accepted that the tenancy ended on the effective date of the notice, in this case, October 31, 2021. The Landlord has proven, on a balance of probabilities, the causes in her One Month Notice and I uphold the notice.

The Landlord's 10 Day Notice was deemed served on the Tenant on November 8, 2021. The Tenant failed to pay the outstanding rent or dispute this notice within five days after receipt in accordance with Section 46(4) of the Act. Based on this inaction, I find that the Tenant is conclusively presumed under Section 46(5) of the Act to have accepted that the tenancy ended on November 15, 2021. I also find that the 10 Day Notice submitted into documentary evidence complies with Section 52 of the Act.

As the Tenant was unsuccessful in her application, I must consider if the Landlord is entitled to an Order of Possession and a Monetary Order for unpaid rent. Section 55 of the Act reads as follows:

***Order of possession for the landlord***

- 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.*
- (1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [landlord's notice: non-payment of rent], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.*

Based on my finding that this tenancy is conclusively presumed to have ended, I Order that the Tenant's applications for dispute resolution to cancel the One Month Notice and the 10 Day Notice are dismissed without leave to re-apply.

I uphold the Landlord's One Month Notice and grant an Order of Possession to the Landlord pursuant to Section 55(1) which will be effective two (2) days after service on the Tenant.

I find that the amount of unpaid rent is \$8,100.00. Pursuant to Section 72(2)(b) of the Act, I Order that the Landlord is authorized to retain the security deposit and pet damage deposit held by the Landlord in partial satisfaction of the monetary award. Pursuant to Section 55(1.1) of the Act, I grant the Landlord a Monetary Order in the amount of \$6,650.00, which has been calculated as follows:

Monetary Award

TOTAL OUTSTANDING RENT:	\$8,100.00
Less security deposit:	-\$900.00
Less pet damage deposit:	-\$550.00
TOTAL OWING:	\$6,650.00

Conclusion

The Landlord is granted an Order of Possession, which will be effective two (2) days after service on the Tenant. The Order of Possession may be filed in and enforced as an Order of the British Columbia Supreme Court.

I grant the Landlord a Monetary Order in the amount of \$6,650.00, 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 Small Claims Division of the Provincial Court of British Columbia and enforced as an Order of that Court.

The Tenant's applications for dispute resolution are dismissed in their entirety.

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: February 16, 2022

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Residential Tenancy Branch