



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding EVERGREEN LANDS LIMITED  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      CNC

### Introduction and Preliminary Matters

On December 22, 2021, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”).

G.B. attended the hearing as an agent for the Landlord; however, the Tenant did not make an appearance at any point during the 24-minute teleconference. At the outset of the hearing, I informed G.B. that recording of the hearing was prohibited and he was reminded to refrain from doing so. He acknowledged this term, and he provided a solemn affirmation.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a Decision or dismiss the Application, with or without leave to re-apply.

G.B. advised that the Landlord was never served the Notice of Hearing package by the Tenant. He stated that he found out about this Application when he happened to contact the Residential Tenancy Branch. Based on this undisputed testimony, as the Tenant did not serve this package in accordance with Section 89 of the *Act*, and as the Tenant did not attend the hearing, I dismiss the Tenant’s Application without leave to reapply.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me;

however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

G.B. advised that the tenancy started on December 1, 2020, that rent was currently established at \$1,776.25 per month, and that it was due on the first day of each month. A security deposit of \$875.00 was also paid. A copy of the tenancy agreement was submitted as documentary evidence.

He stated that the Notice was served by posting it to the Tenant's door on December 13, 2021. The reasons the Landlord served the Notice are because the "Tenant is repeatedly late paying rent" and because the "Tenant or a person permitted on the property by the tenant has cause extraordinary damage to the unit/site or property/park." The effective end date of the tenancy was noted as January 31, 2022 on the Notice.

He advised that the Tenant paid rent late in February, May, July, September, October, November, and December 2021. Thus, the Notice was served. He referenced the 10 Day Notices for Unpaid Rent that were submitted as documentary evidence for each corresponding month of late rent payments. He also cited a warning letter provided to the Tenant on May 4, 2021 cautioning the Tenant of the consequence of additional late payments of rent.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the Act that are applicable to this situation. My reasons for making this Decision are below.

In considering this matter, I have reviewed the Landlord's Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52 and I find that it is a valid Notice.

I find it important to note that a Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part as follows:

***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;*

*(f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;*

In addition, I note the wording of Policy Guideline # 38 provides the following guidance regarding the circumstances whereby 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*

Section 26(1) of the *Act* establishes that "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."

The undisputed evidence before me is that the tenancy agreement requires the Tenant to pay all of the rent by the first of each month. Furthermore, rent was not paid in full on the first of each month more than three times since February 2021.

As there is no evidence before me permitting the Tenant to pay the rent late contrary to the tenancy agreement, I am satisfied that there is a pattern of multiple late payments of rent throughout the months leading up to the issuance of the Notice.

Ultimately, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 47, 52, and 55 of the *Act*. As such, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant.

### Conclusion

The Tenant's Application is dismissed without leave to reapply. I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: March 31, 2022

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Residential Tenancy Branch