



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, CNR, OLC

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. On February 2, 2022, the Tenants applied for:

- an order to cancel a One Month Notice to End Tenancy for Cause, dated January 31, 2022 (the One Month Notice);
- and order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated February 1, 2022 (the 10 Day Notice); and
- an order for the Landlord to comply with the Act, regulation, or tenancy agreement.

Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were also made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The Tenant testified she served the Notice of Dispute Resolution Proceeding (NDRP) and evidence on the Landlords by registered mail on February 12, 2022, and served additional evidence on the Landlord by putting it in the mailbox on February 27, 2022. The Landlords confirmed they received the Tenants' NDRP and both sets of evidence. I find the Tenant served the NDRP and the February 12, 2022 evidence on the Landlords in accordance with section 89 of the Act. I find the Tenants sufficiently served the February 27, 2022 evidence on the Landlords, in accordance with section 71 of the Act.

The Landlord did not serve responsive evidence on the Tenants.

### Preliminary Matter

The Residential Tenancy Branch Rules of Procedure 2.3 states:

**2.3 Related issues** Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As it is not related to the central issue of whether the tenancy will continue, I dismissed the Tenants' claim for an order for the Landlord to comply with the Act, regulation, or tenancy agreement.

### Issues to be Decided

- 1) Are the Tenants entitled to an order to cancel the One Month Notice, and if not, are the Landlords entitled to an order of possession?
- 2) Are the Tenants entitled to an order to cancel the 10 Day Notice, and if not, are the Landlords entitled to an order of possession and a monetary order for unpaid rent?

### Background and Evidence

Those present agreed on the following particulars of the tenancy. It began November 23, 2021; rent is \$1,250.00, due on the last day of the month for the following month; and the Tenants paid a security deposit of \$625.00, which the Landlords still hold. The parties agree there is no written tenancy agreement.

A copy of the One Month Notice was submitted as evidence. The Landlords testified they served the One Month Notice on the Tenants by putting it in the mailbox on January 31, 2022; the Tenant testified that the Landlord served the One Month Notice in person on January 31, 2022.

The One Month Notice is signed and dated by the Landlord, gives the address of the rental unit, states the effective date, states the reasons for ending the tenancy, and is in the approved form. The One Month Notice indicates:

- the Tenants are repeatedly late paying rent;
- the Tenants or a person permitted on the property by the Tenants have seriously jeopardized the health or safety or lawful right of another occupant or the Landlord; and

- the Tenant knowingly gave false information to a prospective tenant or purchaser of the rental unit.

The Details of the Events section of the One Month Notice describes when the Tenants have been repeatedly late paying rent, and continues in two handwritten pages about the tenancy.

A copy of the 10 Day Notice was submitted as evidence. The Landlords testified they served the 10 Day Notice on the Tenants in person on February 1, 2022; the Tenant testified that the Landlord served the 10 Day Notice by putting it in the mailbox and sending the Tenant a message on Facebook. The Tenant testified she received the 10 Day Notice on February 1, 2022.

The 10 Day Notice is signed and dated by the Landlord, gives the address of the rental unit, states the reason for ending the tenancy, and is in the approved form. On page 1 of the 10 Day Notice, the section for the Landlord's name and telephone number is not completed, and there is no effective date indicated.

I advised those present that I was cancelling the 10 Day Notice as page 1 is incomplete. I find the 10 Day Notice does not comply with the content requirements of section 52 of the Act, is therefore without effect or force, and is cancelled.

The Landlord and the Tenant both testified that rent is due at the end of the month for the following month. The Landlord testified that on November 24, 2021, they told the Tenant that rent is due on the last day of the month, and that the Tenant said: "No problem." The Tenants submitted as evidence a signed note from Landlord MD, dated November 23, 2021, which includes: "Rent is due at the end of the month and not after."

#### *December rent payment*

The Landlord testified that as they had not received the rent from the Tenants by December 1, 2021, the Landlord contacted the Tenant, who indicated she had sent an e-transfer at 3:00 p.m.

The Tenant submitted as evidence a signed, undated note from Landlord TD, which states: "Received from [Tenant] 625.00 cash as deposit on townhouse for rent. Remainder to be paid on Dec.1/21." The Tenant testified she understood the remainder to be paid on December 1 referred the December rent.

In a December 1, 2021 text exchange submitted by the Tenant as evidence, the Landlord tells the Tenant she did not get the rent at the end of the month and asks why. The Tenant replied: "My apologies, I totally lost track of the days. ... I will set up my computer this afternoon and get it sent off to you." In the text exchange, the Tenant does not question the Landlord's assertion that rent was due at the end of the month.

#### *January rent payment*

The Landlord testified that on December 31, 2021 at 10:30 p.m. they still had not received the rent, so contacted the Tenants. The Landlord testified the Tenant said she emailed it at 8:00 p.m. The Landlord testified they received only \$1,000 of the rent, by e-transfer, receiving the rest of the rent on January 4, 2022.

In a written submission, the Tenants state that their January 2022 rent was paid late.

#### *February rent payment*

The Landlord testified that because of the difficulties with getting the rent from the Tenants via e-transfers, for the February 2022 rent onwards, they demanded the Tenants pay cash. The Landlord testified they arranged an appointment on the morning of January 31, 2022 to receive the rent from the Tenant. The Landlord testified the Tenant then contacted them to say she had to work and could not make the appointment, but that one of her family members would drop off the rent. The Landlord testified that a family member of the Tenant dropped off an envelope later that day. The Landlord testified he offered the person a receipt, which they declined, and asked the person if he should count the money while they were present, which the person declined, then departed. The Landlords testified that when they counted the money there was only \$1,000.00 in the envelope, and that the Tenants refused to pay the remainder. The Landlord testified that the Tenants said the Landlords are lying about the missing cash.

The Tenants submitted as evidence a "Statement of Events" document, which indicates "My [family member] dropped it off for me and they wouldn't provide her with a receipt, they just closed the door in her face so she left."

The Tenants submitted as evidence an Affidavit of Execution, signed by the Tenants' family member who delivered the rent money to the Landlords. It states that she presented the envelope containing \$1,250.00 to Landlord TD.

The Tenant did not call a witness to testify regarding the payment of the February rent.

#### *March rent payment*

The Landlords testified that they did not receive the March 2022 rent when it was due on February 28, and that the Tenants sent an e-transfer on March 2, 2022 for only \$403.22.

The Tenant testified they did not pay rent in full for March, and that they paid for only the first 10 days of the month.

The Tenants submitted as evidence a document called “Proof\_rent\_was\_paid\_on\_time,” which the Tenant testified she created by cutting and pasting images of her banking information into a Word document as she was not able to print the entire financial document. The submitted document has six images pasted into it, and appears to indicate the following e-transfers:

- \$1,250.00 on December 1, 2021;
- \$1,000.00 on December 31, 2021; and
- \$250.00 on January 5, 2022.

#### *Additional reasons for the One Month Notice*

Regarding the Landlords’ claim that the Tenants or a person permitted on the property by the Tenants have seriously jeopardized the health or safety or lawful right of another occupant or the Landlord, the Landlord testified that the stress due to the Tenants paying rent late caused his wife to have a severe stroke and several small strokes. The Landlords provided no further evidence in support.

Regarding the Landlords’ claim that the Tenants knowingly gave false information to a prospective tenant or purchaser of the rental unit, the Landlord testified that this reason was indicated on the One Month Notice in error. Therefore, I will not consider it in my decision.

#### Analysis

Based on the testimony of those present, I find the Landlords served the Tenants the One Month Notice on January 31, 2022, in accordance with section 88 of the Act, and that the Tenants received it on the same day.

As it is signed and dated by the Landlord, gives the address of the rental unit, states the effective date, states the reason for the notice, and is in the approved form, I find the One Month Notice meets the form and content requirements of section 52 of the Act.

The One Month Notice was received by the Tenants on January 31, 2022. Therefore, in accordance with section 47(4) of the Act, the deadline to dispute it was 10 days later: February 10, 2022. As the Tenants applied to dispute the One Month Notice on February 2, 2022, I find they applied within the deadline.

Section 47(1)(b) of the Act states that a landlord may give notice to end the tenancy if the tenant is repeatedly late paying rent.

Residential Tenancy Policy Guideline [38. Repeated Late Payment of Rent](#) states that three late payments are the minimum number sufficient to justify ending a tenancy under the Act.

In this tenancy, it is clear when rent is due: both parties testified that rent for the following month is due at the end of the current month, the Landlord provided testimony that at the beginning of the tenancy they told the Tenants verbally and in writing that rent is due at the end of the month, and a copy of the Landlord's note stating that rent is due at the end of the month is submitted as evidence.

Considering the payment of the December rent, the Landlords testified that they did not receive it on November 30, 2021, when it was due.

The Tenant has testified that Landlord TD's note, submitted as evidence, states that "the remainder" is due on Dec 1, and that she understood the remainder to be the December rent. While I accept that this note, compared with Landlord MD's note and verbal instruction that rent is due on the last day of the month, could have confused the new Tenants about when rent was due, I find that is not the case here. There is overwhelming undisputed testimony and documentary evidence from both parties that the understanding was that rent is due at the end of the month for the upcoming month, including the December 1, 2021 text exchange submitted as evidence, in which it appears the Tenant was of the understanding that rent was due on November 30, 2021.

In that exchange, in response to the Landlord's demand for the rent, Tenant MC wrote: "My apologies, I totally lost track of the days," and does not question the Landlord's assertion that rent was due at the end of the month. I believe that most new tenants, if the landlord suddenly demanded rent unexpectedly early, would voice to the landlord

their understanding of when rent is due and what that understanding is based on, such as a previous communication from the landlord.

Therefore, I find that the Tenants paid the December 2021 rent late.

Considering the payment of January rent, due on December 31, the Landlords testified that they did not receive it on time; the Tenants also submitted that their January rent was late.

Considering the payment of February rent, due on January 31, the Landlords testified that they did not receive it on time. The Landlords testified that beginning in February, they demanded that the Tenants pay the rent in cash.

The parties agree that an envelope of money for rent was delivered to the Landlords by a family member of the Tenants. They disagree on the amount of money delivered, and the details of what occurred during the handover.

The Tenants submitted as evidence a "Statement of Events" document, which indicates that the envelope contained the full rent of \$1,250.00 in cash, and states: "My [family member] dropped it off for me and they wouldn't provide her with a receipt, they just closed the door in her face so she left." The Tenants have also submitted as evidence two affidavits in support: one from Tenant MC, and one from the family member who delivered the money.

Landlord TD testified that he offered the person a receipt, which they declined, and asked the person if he should count the money while they were present, which the person declined, then departed. The Landlords testified that when they counted the money there was only \$1,000.00 in the envelope, and that the Tenants refused to pay the remainder.

Faced with these conflicting but plausible versions of the same event, I find the Landlords' version of the events, provided in affirmed testimony in the hearing by the person directly involved, more convincing than Tenant MC's verbal submission regarding an event she was not present for, and the Tenants' written submission and affidavits regarding the event.

Accordingly, I find that the Tenants did not pay the February rent in full when it was due on January 31, 2022.

Considering the payment of March rent, due on February 28, the Landlords testified that they did not receive the rent on time, and that the Tenants sent an e-transfer on March 2, 2022 for only \$403.22.

The Tenant testified they did not pay rent in full for March, and that they paid for only the first 10 days of the month.

Based on the evidence before me, and on a balance of probabilities, I find the Tenants paid rent late for December 2021 to March 2022 as follows:

Month	Date rent due	Rent	Date rent paid
December 2021	November 30, 2021	\$1,250.00	\$1,250.00 on December 1, 2021
January 2022	December 31, 2021	\$1,250.00	\$1,000.00 on December 31, 2021 and \$250.00 on January 5, 2021
February 2022	January 31, 2022	\$1,250.00	\$1,000.000 on January 31, 2021
March 2022	February 28, 2022	\$1,250.00	\$403.22 on March 2, 2021

As Policy Guideline 38. states that three late payments are the minimum number sufficient to justify ending a tenancy under the Act, and the Tenants have paid rent late four times in four months, I find that the Landlord is entitled to an order of possession pursuant to section 47(1)(b) of the Act.

As the tenancy is ending, I find it unnecessary to consider the remaining reason on the One Month Notice.

In closing, I bring to the attention of the Landlords to section 13(1) of the Act, which states: "A landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004."

### Conclusion

The Landlord's application is granted; the One Month Notice is upheld.

The Landlords are granted an order of possession which will be effective two days after it is served on the Tenants. The order of possession must be served on the Tenants.



The order of possession 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 23, 2022

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Residential Tenancy Branch