



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OLC, LRE

### Introduction

On December 16, 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”), seeking an Order to comply pursuant to Section 62 of the *Act*, and seeking to set conditions on the Landlord’s right to enter pursuant to Section 70 of the *Act*.

Both the Tenant and the Landlord attended the hearing. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, the parties were advised that if they had an issue with what had been said, to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that she served the Notice of Hearing package by registered mail on December 17, 2021, and she included proof of service of this package. The Landlord advised that he did not receive this package; however, he was prepared to proceed with the hearing.

The Tenant did not submit any evidence for consideration on this file.

The Landlord advised that he served his evidence to the Tenant on February 23, 2022 by putting it in the Tenant's mailbox. The Tenant advised that she did not receive this evidence. Without any proof of service from the Landlord, I am not satisfied that this evidence was served. As such, I have excluded the Landlord's evidence and will not consider it when rendering this Decision.

As per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed issues related to the Notice to end tenancy, and the other claims were dismissed with leave to reapply. The Tenant is at liberty to apply for any other claims under a new and separate Application.

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.

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*.

#### Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's 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.

All parties agreed that the tenancy started on or around April 1, 2021, that the rent was established in the amount of \$1,111.00 per month, and that it was due on the first day of each month. The Tenant claimed to have paid the first and last month's rent, but she did not have any proof of this. The Landlord claimed that a security deposit of \$555.50 and a pet damage deposit of \$555.50 were also paid. However, the Tenant stated that she paid \$1,111.00 as a security deposit. The Landlord did not complete a written tenancy agreement as required by the *Act*.

The Landlord advised that the Notice was served to the Tenant on or around December 1, 2021 by being posted to the Tenant's door. However, he had little knowledge of any relevant details of this tenancy and was ill-prepared for this hearing. The Tenant acknowledged that she received the Notice on November 20, 2021. The Landlord checked off a substantial number of reasons for service of the Notice; however, the only one that was addressed was the reason of the "Tenant is repeatedly late paying rent." The Notice also indicated that the effective end date of the tenancy was January 1, 2022. The Tenant confirmed that despite the Notice not indicating "basement", she understood that this Notice was for the rental unit.

The Landlord could not make any detailed submissions with respect to why he served the Notice for this reason. The Landlord attempted to go through his records to find his instances of late payment of rent. While waiting, the Tenant confirmed that she had paid rent late on November 2, 2021, December 20, 2021, and March 2, 2022. The Landlord came back and advised that most of the Tenant's payments were late and that they were paid by e-transfer generally between the second and the fifth day of each month.

### 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 One Month Notice to End Tenancy for Cause to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52. Therefore, I find that it is a valid Notice.

I find it important to note that the 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;*

In addition, I note the wording of Policy Guideline # 38 provides the following guidance regarding the circumstances whereby the Landlord may end a tenancy where the Tenants are 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.*

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.”

When reviewing the testimony of the parties, I am satisfied that the Tenant has more likely than not paid rent at least three times prior to service of the Notice. Consequently, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 47 and 55 of the *Act*. As such, the Order of Possession takes effect **two days** after service on the Tenant.

Conclusion

The Tenant's Application is dismissed without leave to reapply.

The Landlord is provided with a formal copy of an Order of Possession effective **two days after service of this Order** on the Tenant. Should the Tenant or any occupant on

the premises 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 28, 2022

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Residential Tenancy Branch