



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This hearing dealt with the tenants' application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act) for:

- an order cancelling the One Month Notice to End Tenancy for Cause (Notice) issued by the landlord; and
- to recover the cost of the filing fee.

The tenant and the landlord attended the hearing, the hearing process was explained to the parties, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. Both parties provided affirmed testimony they were not recording the hearing.

The parties confirmed receiving each other's evidence.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the Notice and recovery of their filing fee?

Background and Evidence

The written tenancy agreement shows a tenancy start date of June 1, 2020, for a monthly rent of \$2,500 due on the first day of the month. The tenants moved in early, on May 9, 2020.

The landlord purchased the property from the original landlord and took ownership in December 2020.

The landlord testified in support of the Notice, issued pursuant to section 47(1)(b) of the Act. The Notice filed in evidence was dated January 4, 2022, listing an effective end of tenancy date of February 28, 2022. The landlord said that the Notice was served to the tenants by email and registered mail on January 5, 2022, and the tenants confirmed in their application they received the Notice on January 6, 2022.

The cause listed on the Notice alleged the tenants are repeatedly late paying rent.

The landlord submitted on the Notice and confirmed at the hearing that the tenants paid their rent late for 11 of the 13 months from the time of their ownership in December 2020 through January 2022. The landlord submitted that the tenants were late paying their rent in January, April, May, June, July, August, September, October, November and December 2021 and January 2022. The landlord submitted they gave the tenants constant reminders about the late payments, often with no response.

*Tenant's relevant response-*

The tenant agreed the payments were late, but there have been difficulties throughout the year preventing timely payments. The tenant said that they now have a method in place to ensure timely rent payments.

Both parties agree that the tenants have paid rent for April 2022.

### Analysis

Based on the foregoing, relevant evidence, and on a balance of probabilities, I find as follows:

Upon review of the One Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of section 52 of the Act and I find that it was served upon the tenant in a manner that complies with section 89(1) of the Act.

Section 47(1)(b) of the Act authorizes a landlord to end a tenancy if the tenant is repeatedly late in paying rent.

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove the tenancy should end for the reason indicated on the Notice.

Under section 26 of the Act, 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.

Residential Tenancy Policy Guideline 38 provides that three late payments are the minimum number sufficient to justify a notice under these provisions.

After considering the undisputed evidence about the 11 late payments of rent from January 2021 through January 2022, I find that the landlord has provided sufficient evidence to prove the cause listed on the Notice.

Given the above, I find the landlord has submitted sufficient evidence to prove on a balance of probabilities that the tenants are repeatedly late paying rent.

I therefore dismiss the tenant's application requesting cancellation of the Notice and to recover the cost of the filing fee, without leave to reapply, as I find the Notice is valid, supported by the evidence, and therefore, enforceable.

Under Section 55(1)(b) of the Act, if a tenant's application to cancel a Notice has been dismissed, I must grant the landlord an order of possession.

As the landlord agreed that the monthly rent has been paid for April 2022, I find the landlord is entitled to and I grant an order of possession of the rental unit (Order) effective on April 30, 2022, at 1:00 pm. The landlord was in agreement with this date.

If the tenants fail to vacate the rental unit pursuant to the terms of the Order after being served with it, the Order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenants are cautioned that costs of such enforcement such as **bailiff fees** are recoverable from the tenants.

### Conclusion

For the reasons stated above, the tenants' application seeking cancellation of the Notice and recovery of their filing fee is dismissed, without leave to reapply.

The landlord has been issued an order of possession for the rental unit, effective on April 30, 2022, at 1:00 pm.

The tenant's request for recovery of the filing fee is dismissed, without leave to reapply.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: April 15, 2022

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Residential Tenancy Branch