



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **CNC, LRE, OLC, FFT**

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "*Act*") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was assisted by a family member.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Are the tenants entitled to any of the other relief sought?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree that the monthly rent for this tenancy is \$2,450.00 payable on the first of each month. A security deposit of \$1,225.00 was collected at the start of the tenancy and is still held by the landlord.

The landlord has issued multiple 1 Month Notices on the tenants. The parties agree that the present application seeks to dispute notices dated December 28, 2021, January 13, 2022 and January 26, 2022. Copies of the notices were submitted into documentary evidence.

The reason provided on the January 13, 2022 notice for the tenancy to end is that the tenants have been repeatedly late paying rent. The landlord submits that the tenants have paid February rent on February 4, 2021, March rent on March 4, 2021, August rent on August 3, 2021, November rent on November 2, 2021 and January rent on January 5, 2022. The landlord submitted copies of electronic fund transfer statements showing the dates and amounts paid.

The tenants confirm that they were late in paying rent on the dates cited by the landlord. The tenants say that they were not late by many days, faced financial hardships and some of the dates that rent was due fell on statutory holidays so they cannot be expected to make payments on those dates.

The tenants also made some submissions regarding asbestos in the rental unit and the landlord entering their suite.

### Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice.

The landlord cited repeated late payment as the cause for ending the tenancy in the 1 Month Notice dated January 13, 2022. Residential Tenancy Policy Guideline 38 provides that three late payments are the minimum number to justify a notice to end tenancy.

The agreed upon evidence of the parties is that, pursuant to the tenancy agreement rent is due on the first of each month. The parties agree that the tenants failed to pay the rent on the first of the month in February, March, August and November, 2021 and January 2022. Accordingly, I find that the landlord has shown on a balance that the tenants have been repeatedly late paying rent.

I find the tenants' submission that payment cannot be made when the first of the month falls on a holiday or weekend when the bank is closed to be unreasonable. The onus is on the tenants to arrange for payment of the full amount of rent by the due date. I find the tenants' inability to make proper arrangements to not be an excuse for late payment of rent. I accept the landlord's evidence that they have not consented to late payment of rent and that the rent is due on the first as set out in the agreement.

Accordingly, as I find the landlord has met their evidentiary onus to show a basis for the issuance of the 1 Month Notice, I dismiss the tenants' application.

Section 55(1) of the *Act* reads as follows:

**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 makes an oral request for an order of possession, and*
- (b) the director dismisses the tenant's application or upholds the landlord's notice.*

The landlord's 1 Month Notice dated January 13, 2022 meets the form and content requirements of section 52 of the *Act* as it is in the approved form and clearly identifies the parties, the address of the rental unit and the effective date of the notice. The notice provides the reasons for ending the tenancy, the repeated late payment of rent.

As I have dismissed the tenants' application to dispute the 1 Month Notice, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*. As the effective date of the notice has passed, I issue an Order of Possession effective 2 days after service.

As I have found that this tenancy ends in accordance with the 1 Month Notice of January 13, 2022, I find it unnecessary to make a finding on the portions of the tenants' application seeking relief that pertains to an ongoing tenancy.

### Conclusion

The tenants' application is dismissed in its entirety without leave to reapply.

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. Should the tenants 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: April 5, 2022

---

Residential Tenancy Branch