



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FFT

### Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) filed by the Tenants under the *Residential Tenancy Act* (the Act) on October 17, 2021, seeking:

- Cancellation of a One Month Notice to End Tenancy for Cause (the One Month Notice); and
- Recovery of the filing fee.

The hearing was convened by telephone conference call on February 28, 2022, at 11:00 A.M. (Pacific Time), and was attended by the Tenants, the Landlord, and the Landlord's spouse, who is also a co-owner of the property. All testimony provided was affirmed. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The parties were advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over one another and to hold their questions and responses until it was their opportunity to speak. The Parties were also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and the parties confirmed that they were not recording the proceedings.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondent must be served with a copy of the Application and Notice of Hearing. The Tenants testified in the hearing that the Notice of Dispute Resolution Proceeding (NODRP) package, which includes the Application and the Notice of Hearing, was sent to the Landlord A.P., who is the only landlord named in the Application, by registered mail on October 22, 2021, and the Landlord A.P. confirmed receipt of these documents

on October 25, 2022. As a result, I find that the Landlord was served on October 25, 2021, in accordance with the *Act* and the Rules of Procedure.

Although I have reviewed all evidence and testimony before me that met that was accepted for consideration in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision will be emailed to them at the email addresses confirmed at the hearing.

### Preliminary Matters

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Residential Tenancy Branch (the Branch) under Section 9.1(1) of the *Act*.

### Issue(s) to be Decided

Are the Tenants entitled to cancellation of the One Month Notice?

If not, is the Landlord A.P. entitled to an Order of Possession?

Are the Tenants entitled to recovery of the filing fee?

### Background and Evidence

The tenancy agreement in the documentary evidence before me, signed by the Tenants and the former owners/landlords S.M. and P.M. states that the one year fixed term tenancy commenced on November 15, 2020, had a fixed term end date of November 15, 2021, and that the tenancy would continue on a month to month basis after the end of the fixed term. The tenancy agreement states that rent in the amount of \$1,850.00 is due on the 15<sup>th</sup> day of each month and the parties confirmed that the rent amount has not changed since the transfer of ownership on January 15, 2021.

The Landlords stated that as the Tenants had paid rent late on at least three occasions, they issued the One Month Notice. The Landlords stated that the One Month Notice

was posted to the door of the rental unit on October 12, 2021. The Tenants confirmed receipt on October 15, 2021, when they returned to the rental unit after being away. The One Month Notice in the documentary evidence before me is signed and dated October 12, 2021, and has an affective date of November 15, 2021. The One Month Notice states that the reason for issuance is that the Tenants have been repeatedly late paying rent. In the details of cause section the Landlords stated that the Tenants paid rent late on the following dates:

- June 17, 2021 – due June 15, 2021;
- June 1, 2021 – due May 15, 2021; and
- April 16, 2021 – due April 15, 2021

The Landlords provided copies of interac e-transfer summaries showing the above noted payments. They also argued that additional breaches of the tenancy agreement have occurred since the issuance of the One Month Notice, such as renting out the property on short term rental websites without consent, impersonating the Landlords to collect rent and damage deposits, and subleasing the property and or/having roommates without their consent. The Landlords submitted documentary evidence for consideration in relation to these claims.

The Tenants argued that the additional breaches that the Landlords allege to have occurred are immaterial to the validity of the One Month Notice, as the ground listed for ending the tenancy relates only to repeated late payment of rent and in any event, the additional breaches are not alleged to have occurred until after the issuance of the One Month Notice. The Tenants referenced Residential Tenancy Policy Guidelines (Policy Guidelines) #13 and #38. The Tenants stated that to date, they have made all 16 rent payments in full, and that of those 16 payments, 14 were made on time. The Tenants pointed to one of the interac e-transfer summaries submitted by the Landlords, and argued that as it shows the receipt time in Eastern Time, not Pacific Time, and that the rental unit is located in a Pacific Time zone, the payment made on April 16, 2021, at 12:55 AM Eastern Time, was actually made on April 15, 2021, at 9:55 PM Pacific Time, which means that it was not in fact late. As a result, the Tenants argued that the threshold for ending the tenancy under section 47(1)(b) of the *Act*, as set out in Policy Guideline #38, has not been met, as they have only paid rent late twice, not three times.

Further to the above, the Tenants argued that Policy Guideline #38 states that a landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision. The Tenants stated that as the only two late payments were for May and June of 2021, and the One

Month Notice was not served until October of 2021, the Landlords should be precluded from seeking an end to the tenancy as a result of those late payments as they did not act in a timely manner in relation to them.

Finally, the Tenants argued that the One Month Notice has been served in bad faith, as the Landlords intend to occupy the rental unit themselves, and are simply attempting to avoid the need to give them a proper Two Month Notice to End Tenancy for Landlord's Use of Property (Two Month Notice), and pay them one months rent. While the Landlords denied serving the One Month Notice in bad faith, they acknowledged that they purchased the property with the eventual plan of moving in, although they were in no rush. The Tenants disputed this, stating that they were previously told by the Landlords that at the end of the fixed term of their tenancy agreement, they would be given a Two Month Notice.

### Analysis

Section 47(1)(b) of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent. Policy Guideline #38 states that three late payments are the minimum number sufficient to justify a notice to end tenancy under section 47(1)(b) of the *Act* and that a landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision. I accept the Tenants' argument that the 3<sup>rd</sup> rent payment listed as late by the Landlords in April of 2021 was not in fact late, as the Landlords were relying on Eastern Time to make that assessment, not Pacific Time. Based on the testimony of the Tenants and the documentary evidence submitted by the Landlords, I am therefore satisfied that the April 2021 rent payment was made by the Tenants at 9:55 PM Pacific Time on April 15, 2021, which means that it was on time. As a result, I am satisfied that the Tenants made only two late rent payments prior to the issuance of the One Month Notice, which does not meet the threshold set out in Policy Guideline #38 for ending a tenancy under section 47(1)(b) of the *Act*.

Although the Landlords argued that there have been additional breaches to the *Act* and the tenancy agreement since the One Month Notice was served, I have not considered these arguments in assessing the validity of the One Month Notice before me for consideration, as only late payment of rent was noted as a ground for ending the tenancy on the One Month Notice and the additional breaches are alleged to have occurred after the issuance of the One Month Notice.

Based on the above, I am satisfied on a balance of probabilities that the Landlords did not have authority under section 47(1)(b) of the *Act* to serve and enforce the One Month Notice, as the Tenants had not made at least three late rent payments prior to issuance of the One Month Notice. Further to this, I find it more than merely coincidental that the effective date for the One Month Notice happened to coincide with the end date for the fixed term of the tenancy agreement, especially given the Landlords' acknowledgement that they purchased the property with the intention to occupy it, the Tenants' testimony that the Landlords previously advised them that they would be served with a Two Month Notice once the fixed term of their tenancy agreement ended, and the significant delay between the last late rent payment noted by the Landlords in the One Month Notice and the issuance of the One Month Notice itself.

As a result, I therefore grant the Tenants' Application seeking cancellation of the One Month Notice. As the Tenants were successful in their Application, I also grant them recovery of the \$100.00 filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2)(a) of the *Act*, I permit the Tenants to withhold \$100.00 from the next months rent payable under the tenancy agreement.

### Conclusion

The Tenants' Application seeking cancellation of the One Month Notice is granted. I therefore order that the One Month Notice dated October 12, 2021, is cancelled and that the tenancy continue in full force and affect until it is ended by one or both of the parties in accordance with the *Act*.

The Tenants are permitted to withhold \$100.00 from the next months rent payable under the tenancy agreement in recovery of their filing fee.

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: May 4, 2022

---

Residential Tenancy Branch