



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

Tenant's application:	CNC CNR FFT
Landlord's application:	OPC OPR FFL

### **Introduction**

This hearing was conducted based on an Application for Dispute Resolution (application) by both parties seeking remedy under the *Residential Tenancy Act* (Act). The tenant has requested to cancel a 1 Month Notice to End Tenancy for Cause dated March 31, 2022 (1 Month Notice), a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 2, 2022 (10 Day Notice) and to recover the cost of the filing fee. The landlord applied for an order of possession based on a 10 Day Notice, a 1 Month Notice and to recover the cost of the filing fee.

The tenant and the landlord attended the teleconference hearing. At the start of the hearing I introduced myself and the participants. The parties were provided with the opportunity to submit documentary evidence prior to this hearing. I have reviewed all evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, only the evidence 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.

Neither party raised concerns about service of documentary evidence or the ability to review evidence prior to the hearing.

### **Preliminary and Procedural Matter**

The parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the Decision would be emailed to them.

Issue to be Decided

- Should the 1 Month Notice to End Tenancy for Cause be cancelled?

Background and Evidence

A copy of the most recent tenancy agreement was submitted for my consideration. The month-to-month tenancy agreement began on July 1, 2020. There is no dispute that rent is due on the first day of each month and is \$980.00 per month.

The 10 Day Notice was dated April 2, 2022 and the parties confirmed that the rent owing of \$980.00 was paid later that day on April 2, 2022, which makes the 10 Day Notice of no force or effect, which I will address later in this Decision.

The 1 Month Notice was received by the tenant on March 31, 2022 based on their application details. The 1 Month Notice alleges 2 causes as follows:

- ☒ Tenant is repeatedly late paying rent
- ☒ Tenant or a person permitted on the property by the tenant has (check all boxes that apply):
- ☐ significantly interfered with or unreasonably disturbed another occupant or the landlord.
  - ☒ seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
  - ☐ put the landlord's property at significant risk

The Details of Cause(s) section of the 1 Month Notice states the following:

**Details of Cause(s): Describe what, where and who caused the issue and include dates/times, names etc. This information is required. An arbitrator may cancel the notice if details are not provided.**

Details of the Event(s):

Late rent for three consecutive month, rent is due on the first of the month paid on: Jan 21, 2022; Feb 4, 2022; Mar 4, 2022; (communication emails available) Example: On March 4 by email: When ask to pay rent on time i was told "or what?"

every day consistently spraying his basement room with very strong smell substance which fill up whole house. This gives me and my family allergic reaction and other health issues. We have asked him to stop on many occasions. One of the examples on email communication 2021-09-17.

The landlord testified that the tenant paid their rent late as follows:

1. January 1, 2022 rent paid on January 21, 2022
2. February 1, 2022 rent paid on February 4, 2022
3. March 1, 2022 rent paid on March 4, 2022

4. April 1, 2022 rent paid on April 2, 2022
5. May 1, 2022 rent paid on May 6, 2022

The landlord stated that the tenant was also issued a 10 Day Notice in May 2022 but paid the rent after being served with that 10 Day Notice.

The tenant claims that regarding January 2022 rent the tenant received an “ok” from the landlord to pay rent late. The landlord did not agree and referred to the following documentary evidence:

**January rent (Deposited Jan 21):**

On Jan 4, I asked [REDACTED] when he will be depositing rent. On Jan 5: He replied that he forgot about rent. He said he will be depositing on Jan 7. He was sound that he didn't have money for rent, that he did overspend during Christmas and ask for extension. I have notice in the past that he is not honest person. Then he talks about covid or bank issues in his defence. Rent was deposited on Jan 21 (3 weeks later!). Jan 21 was pay day with Government employees which he is. He did ask me if I am ok with late rent. I have said ok as I acknowledging that he would finally pay.

The landlord stated that on January 5, 2022, the tenant promised to pay rent by January 7, 2022 and failed to pay any rent until January 21, 2022. The landlord denied saying that paying late rent was “ok” and only said “ok” to acknowledge when the tenant indicated they would be paying the rent and nothing more. The landlord took the position that as of January 4, 2022 when the landlord communicated with the tenant to determine where the late rent was, that the tenant was already late paying rent.

The tenant confirmed that they paid February and March 2022 rent late. The tenant stated that they had to increase payments to his wife for support and that took priority as otherwise he would have a warrant for his arrest if he did not make those payments first. The tenant stated that they could “not remember May rent.”

At this point in the hearing, I was satisfied that the landlord had met the burden of proof on the first ground so determined that additional evidence related to the second ground was not necessary and the hearing concluded after 26 minutes.

The landlord confirmed that the tenant has paid for use and occupancy of the rental unit for July 2022.

## Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

**10 Day Notice** – Section 46(4) of the Act applies and states:

46(4) Within **5 days** after receiving a notice under this section, **the tenant may**

(a) **pay the overdue rent, in which case the notice has no effect, or**

(b) dispute the notice by making an application for dispute resolution.

[emphasis added]

Given that the parties agreed that the 10 Day Notice dated April 2, 2022 followed a full payment of rent later in the day on April 2, 2022, I find that the 10 Day Notice is of no force or effect as the tenant paid the rent owing within 5 days of being served with that 10 Day Notice.

**1 Month Notice** - RTB Policy Guideline #38 – *Repeated Late Payment of Rent* states that 3 late payments are the minimum number sufficient to justify a notice under this provision. As a result of facts before me I find that the tenants paid their rent late on at least 3 occasions before the 1 Month Notice was issued and at least one occasion since being served with the 1 Month Notice. I prefer the testimony of the landlord regarding January 2022 late rent as I find the landlord's explanation of the use of the word "ok" is more consistent with a late payment of rent than the tenant's version stating that the landlord excused January 2022 late rent by saying "ok".

In reaching this finding, I have considered that before the landlord communicated with the tenant on January 4, 2022, that the tenant was already late paying rent due on January 1, 2022. In addition, I find that the tenant failed to comply with their promise on January 5, 2022 to pay the landlord by January 7, 2022 and instead did not pay January 2022 rent until January 21, 2022. Therefore, I am not persuaded by the tenant's explanation of the word "ok" in terms of January 2022 rent.

The tenant confirmed February and March 2022 rent was paid late. I find I do not need to consider April 2022 rent, which I accept the tenant had banking issues; however, I am not persuaded by the tenant's explanation that they could not remember when May rent was paid given that it was only 2 months before the hearing. Furthermore, there is no "financial hardship" clause that excuses the late payment of rent in the Act.

I do not find it necessary to consider the other cause listed on the 1 Month Notice as the landlord succeeded in proving the first cause. Therefore, **I dismiss** the tenant's application to cancel the 1 Month Notice and I uphold the landlord's 1 Month Notice dated March 31, 2022 with an effective vacancy date of April 30, 2022. Section 55 of the Act applies and states:

**Order of possession for the landlord**

**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 to the landlord an order of possession of the rental unit if**

**(a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and**

**(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.**

[emphasis added]

I have reviewed the 1 Month Notice and have determined that it complies with section 52 of the Act. Therefore, **I must grant** the landlord an order of possession pursuant to section 55 of the Act **effective July 31, 2022 at 1:00 p.m.** as the effective vacancy date of the 1 Month Notice has already passed and money has been paid for use and occupancy for July 2022.

The tenancy ended on April 30, 2022, the effective vacancy date listed on the 1 Month Notice.

I do not grant the tenant the filing fee. As the landlord's application resulted in an order of possession, I grant the landlord the recovery of their **\$100.00** filing fee pursuant to section 72 of the Act. I authorize the landlord to deduct \$100.00 from the tenant's security deposit of \$425.00 in full satisfaction of the recovery of the cost of the filing fee pursuant to sections 38, 67 and 72 of the Act.

Pursuant to sections 38 and 62(3) of the Act, I find that the tenant's security deposit balance is \$325.00 effective immediately.

Conclusion



The tenants' application to cancel the 1 Month Notice to End Tenancy for Cause has been dismissed.

The 1 Month Notice issued by the landlord has been upheld and is valid.

The tenancy ended on April 30, 2022.

The landlord has been granted an order of possession effective July 31, 2022 at 1:00 p.m. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia. Should the tenant fail to vacate the rental unit, the tenant is cautioned that they may be liable for all costs related to enforcement of the order of possession.

The decision will be emailed to the parties. The order of possession will be emailed to the landlord only for service on the tenant.

The tenant's security deposit is now \$325.00 as noted above.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: July 26, 2022

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Residential Tenancy Branch