



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **TT: CNC**  
                             **LL: OPC FFL**

### Introduction

This hearing dealt with two applications for dispute resolution pursuant to the *Residential Tenancy Act* (the “Act”). The Tenant made one application for dispute resolution (“Tenant’s Application”) for cancellation a One Month Notice for Cause dated March 7, 2022 (“1 Month Notice”) pursuant to section 47.

The Landlord made one application for dispute resolution (“Landlord’s Application”) for:

- an Order of Possession for cause pursuant to section 47; and
- authorization to recover the filing fee of the Landlord’s Application from the Tenant pursuant to section 72.

The Tenant did not attend this hearing scheduled for 9:30 am. I left the teleconference hearing connection open for the entire hearing, which ended at 9:53 am, in order to enable the Tenant to call into this teleconference hearing. An agent (“TC”) for the Landlord appeared at the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Tenant’s Notice of Dispute Resolution Proceeding (“Tenant’s NDRP”) and the Landlord’s Notice of Dispute Resolution Proceeding (“Landlord’s NDRP”). I also confirmed from the teleconference system that TC and I were the only ones who had called into this teleconference.

TC stated the Landlord received the Tenant’s NDRP by registered mail sometime in April 2022. I find the Tenant served the Tenant’s NDRP on the Landlord in accordance with the provisions of section 89 of the Act.

TC stated the Landlord served the Landlord's NDRP and Landlord's evidence ("Landlord's NDRP Package") by registered mail on May 5, 2022. TC provided the Canada Post tracking number for the NDRP Package to corroborate her testimony. I find the Landlord served the Landlord's NDRP Package on the Tenant pursuant to the provisions of sections 88 and 89 of the Act. Pursuant to section 90 of the Act, I find the Tenant was deemed to have been served with the Landlord's NDRP Package on May 10, 2022.

#### Preliminary Matter – Removal of TC as respondent on Tenants' Application

At the outset of the hearing, TC stated she was not a landlord of the rental unit but was the agent for the Landlord. TC stated the tenancy agreement and the 1 Month Notice named BP as the Landlord as did the Landlord's Application. TC requested that I amend the Tenant's Application remove her as a respondent and to name BP as the respondent to the Tenant's Application

Residential Tenancy Branch Rule of Procedure 4.2 states:

#### **4.2 Amending an application at the hearing**

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

The Tenant could reasonably have anticipated the Landlord would request an amendment to remove a party, who is not a landlord to the tenancy, as a respondent and to name BP as the respondent in the Tenant's Application. As such, I order the Tenant's Application be amended to remove TC as a respondent and add BP as the respondent.

Preliminary Matter – Effect of Non-Attendance by Tenant

Rules 7.1 and 7.3 of the Rules state:

**7.1 Commencement of the dispute resolution hearing**

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

**7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of the party, or dismiss the application, with or without leave to re-apply.

**7.4 Evidence must be presented**

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Given the Tenant did not attend the hearing before it concluded at 9:53 am, the Tenant's Application is dismissed without leave to reapply. As the Tenant did not attend the hearing, I will not consider any of his evidence he submitted before this hearing.

Rule 6.6 of the Rules states:

**6.6 The standard of proof and onus of proof**

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Notwithstanding I have dismissed the Tenant's Application, the Landlord is required to prove cause for ending the tenancy pursuant to the 1 Month Notice.

### Issues to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to recover the filing fee of the Landlord's Application from the Tenant?

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Landlord's Application and my findings are set out below.

TC submitted into evidence a copy of the tenancy agreement between the Landlord and Tenant dated April 29, 2021. TC testified the tenancy started on May 1, 2021, for a fixed term ending April 30, 2022, with rent of \$1,450.00 payable on the 1<sup>st</sup> day of each month. The Tenant was to pay a security deposit of \$725.00 by April 23, 2021. TC stated that, pursuant to a Notice of Rent Increase dated January 20, 2022, the rent increased to \$1,471.00 per month on May 1, 2022. TC stated the Tenant paid the security deposit and the Landlord is holding it in trust for the Tenant. TC stated the Tenant has paid the rent for July 2022.

TC testified the Landlord served the 1 Month Notice on the Tenant's door on March 7, 2022. TC submitted into evidence a signed and witnessed Proof of Service on Form RTB-34 to corroborate her testimony on service of the 1 Month Notice on the Tenant. Based on the undisputed testimony of TC, I find the 1 Month Notice was served on the Tenant in accordance with the provisions of section 88 of the Act. Pursuant to section 90 of the Act, I find the 1 Month Notice was deemed to have been received by the Tenant on March 10, 2022. The Tenant made the Tenant's Application to dispute the 1 Month Notice.

TC stated the Tenant has not vacated the rental unit but the Tenant has told the Landlord he intends to vacate on July 31, 2022.

The 1 Month Notice listed two causes for ending the tenancy as follows:

1. tenant is repeatedly late paying rent; and

2. breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The 1 Month Notice provides the following details of the causes for ending the tenancy:

The tenant has not provided a copy of his current insurance policy – per tenancy agreement and written requests.

The tenant has been given several written warnings about noise complaints – yelling, screaming, banging, drumming and has not corrected his behavior.

The tenant is frequently late paying his rent and has been given his final written warning that this is not acceptable. He has been issued 10 Day Notices to End Tenancy for Unpaid Rent or Utilities October 5, 2021, November 3, 2021, January 5, 2022 and March 7, 2022.

TC stated the Tenant has been late paying the rent for October and November 2021 and January and March 2022. TC submitted into evidence a copy of the ledger for the Tenant's rental unit to corroborate her testimony the Tenant was late paying rent for those four months. TC stated the Landlord served the Tenant with Ten Day Notices for Unpaid Rent and/or Utilities dated October 5, 2021 November 3, 2021, January 5, 2022 and March 7, 2022 after the Tenant was late paying the rent for October and November 2021 and January and March 2022.

TC stated paragraph 50 of the tenancy agreement required the Tenant to provide a copy of an insurance certificate within 30 days of signing the tenancy agreement and each year thereafter. TC stated the Tenant never provided the Landlord with a copy of the insurance certificate notwithstanding the Landlord gave the Tenant warning letters regarding the Tenant's failure to provide the certificate. TC stated she overlooked submitting a copy of the warning letters to the Tenant regarding the request the Tenant provide the insurance certificate.

### Analysis

Although the Landlord specified two causes in the 1 Month Notice, I will restrict my analysis to whether the Landlord has shown cause, on a balance of probabilities, that the Tenant was repeatedly late paying the rent.

Subsection 47(1)(b) and sections 47(2), 47(3), 47(4) and 47(5) of the Act state:

- 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;*  
[...]
- (2) A notice under this section must end the tenancy effective on a date that is  
(a) not earlier than one month after the date the notice is received, and  
(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.
- (3) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.
- (4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

[emphasis added in italics]

TC testified the Tenant was late paying the rent for October 2021, November 2021, January 2022 and March 2022. TC submitted copies of the ledger for the Tenant's rental unit and copies of the four Notices to End Tenancy for Unpaid Rent and/or Utilities that she testified were served on the Tenant in respect of the four late rent payments.

*Residential Tenancy Policy Guideline 38* ("PG 38") provides guidance on when a landlord may end a tenancy where the tenant is repeatedly late paying rent. PG 38 states in part:

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. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be "repeatedly" late.

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.

In exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.

Whether the landlord was inconvenienced or suffered damage as the result of any of the late payments is not a relevant factor in the operation of this provision.

The Tenant did not attend the hearing to provide testimony on whether there were any exceptional circumstances that caused him to be late for one or more of the late payments for the months of October 2021, November 2021, January 2022 or March 2022. As such, I accept the undisputed affirmed testimony of TC, and the evidence submitted by the Landlord, that the Tenant was late four times. Pursuant to PG 38, I find the Tenant was repeatedly late as he failed to pay the rent on three or more occasions. Based on the foregoing, I find the Landlord had cause to end the tenancy pursuant to section 47(1)(b) of the Act.

Section 55(1) of the Act states:

- 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.

I have reviewed the 1 Month Notice and find it complies with the form and content requirements of section 52 of the Act. Section 55(1) of the Act provides that, where a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the Act, then I must grant the landlord an Order of Possession. At the hearing, TC testified the Tenant has not vacated the rental unit and the Tenant paid the rent for July 2022. As such, pursuant to section 55(1) of the Act, I grant the Landlord an Order of Possession of the rental unit. Pursuant to section 68(2)(a), I order the tenancy ends on July 31, 2022.

As the Tenant's Application has been dismissed, the Tenant is not entitled to be reimbursed for the filing fee of the Tenant's Application.

As the Landlord has been successful in its claim, I order the Tenant pay the Landlord \$100.00 for the filing fee of the Landlord's Application. Pursuant to section 72(2)(b) of the Act, the Landlord may deduct the \$100.00 from the Tenant's security deposit of \$725.00. The Landlord must handle the remaining \$625.00 of the Tenant's deposit in accordance with the requirements of the Act.

### Conclusion

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

The Tenant is ordered to deliver vacant possession of the rental unit to the Landlord within two days of being served with a copy of this decision and attached Order by the Landlord. This Order of Possession may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlord is authorized to deduct \$100.00 from the Tenant's security deposit to cover the filing fee of the Landlord's Application.

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: July 27, 2022

---

Residential Tenancy Branch