



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPC, FFL

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an Order of Possession for Cause, based on having served the Tenant with a One Month Notice to End Tenancy for Cause dated January 18, 2022; and to recover the \$100.00 cost of their Application filing fee.

An agent for the Landlord, C.S. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant. The teleconference phone line remained open for over 15 minutes and was monitored throughout this time. The only person to call into the hearing was the Agent, who indicated that he was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Agent.

I explained the hearing process to the Agent and gave him an opportunity to ask questions about it. During the hearing the Agent was given the opportunity to provide his evidence orally and to respond to my questions. I reviewed all oral and written 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.

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Agent testified that he served the Tenant with these Notice of Hearing documents and the Landlord's evidence by Canada Post registered mail, sent on March 24, 2022. The Agent provided a Canada Post tracking number as evidence of service. I find that the Tenant was deemed served with the Notice of Hearing documents and evidence in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Agent in the absence of the Tenant.

### Preliminary and Procedural Matters

The Agent provided the his email address in the Application, and he provided the Tenant's email address in the hearing. The Agent confirmed his understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Agent that pursuant to Rule 7.4, I would only consider his written or documentary evidence to which he pointed or directed me in the hearing. I also advised the Agent that he is not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

### Issue(s) to be Decided

- Is the Landlord entitled to an order of possession?
- Is the Landlord entitled to recovery of the \$100.00 Application filing fee?

### Background and Evidence

The Agent submitted a copy of the tenancy agreement, and in the hearing, he confirmed that the periodic tenancy began on November 1, 2020, with a monthly rent of \$1,800.00, due on the first day of each month. The Agent said that the Tenant did not pay the Landlord a security deposit, nor a pet damage deposit at the start or during the tenancy.

The Agent submitted a copy of the One Month Notice, which was signed and dated January 18, 2022, and which has the rental unit address. It was served via registered mail on January 18, 2022, with an effective vacancy date of February 28, 2022, and it was served on the grounds that the Tenant is repeatedly late paying rent; and that the Tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

In the hearing, the Agent said:

The main reason is late payment of rent and partial payment. I summed up his payments in a proof of cause, and an updated list of payments. Late or partial payments date all the way back to March 2021, and he has been late by providing partial payments since then, even after the notice was filed. I accepted rent as 'for use and occupancy only', and submitted copies of these receipts. He's been late 16 times – every month since March 2021, and he doesn't seem to care that it's hard to manage.

I asked the Agent about the Landlord's allegation that the Tenant breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Agent said:

We had requested a copy of the keys. He has changed the locks. I provided the notice for the keys, he never provided those keys, so we have no access to the unit. It's not great or safe. We have given notices for inspections, but he has not allowed us to do this. The main cause is the repeated late payments.

The Agent directed my attention to a ledger or a list of payments starting in November 2021, which demonstrates that the Tenant has been late in paying his full rent 12 times since then.

### Analysis

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

Section 26 of the Act sets out that a tenant must pay rent when it is due:

#### **Rules about payment and non-payment of rent**

**26** (1) 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.

Section 47 of the Act authorizes a landlord to end a tenancy for repeated late payment of rent:

#### **Landlord's notice: cause**

**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;

RTB Policy Guideline 38 explains that, absent any exceptional circumstances (such as a bank error through no fault of the tenant), three instances of late payment of rent are

the minimum number of instances of late payments required to support this type of Notice to End Tenancy. With no evidence from the Tenant as to why he has been late paying rent so often, I find that there is no evidence of any exceptional circumstances that caused the Tenant to be late before me. I, therefore, find that the Landlord has provided sufficient evidence to be granted an Order of Possession of the rental unit from this Tenant.

**Pursuant to section 55** of the Act, I grant the Landlord an **Order of Possession** of the rental unit, **effective two days after deemed service** of this Order on the Tenant. Given her success, I also award the Landlord with recovery of the **\$100.00** Application filing fee from the Tenant, pursuant to sections 72 and 67 of the Act.

### Conclusion

The Landlord is successful in her Application for an order of possession of the rental unit, as the Landlord provided sufficient evidence that she has cause to end the tenancy pursuant to sections 47 and 55 of the Act. Given her success, the Landlord is also awarded recovery of the **\$100.00 Application filing fee** from the Tenant.

Pursuant to section 55 of the Act, I grant an **Order of Possession** to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I grant the Landlord a **Monetary Order** under section 67 of the Act from the Tenant of **\$100.00** for recovery of the \$100.00 Application filing fee. This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

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 07, 2022

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Residential Tenancy Branch