



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LIVING BALANCE/ STARLITE  
APARTMENTS and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **CNC, RPP, FFT**

### **Introduction**

This hearing dealt with the tenant's 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 requiring the landlord to return the tenant's personal property pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given an opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agent (the "landlord").

In accordance with the *Act*, Residential Tenancy Rule of Procedure 6.1 and 7.17 and the principles of fairness and the Branch's objective of fair, efficient and consistent dispute resolution process parties were given an opportunity to make submissions and present evidence related to the claim. The parties were directed to make succinct submissions, and pursuant to my authority under Rule 7.17 were directed against making unnecessary submissions or remarks not related to the matter at hand.

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 landlord confirmed receipt of the tenant's materials. Based on their testimonies I find the landlord duly served in accordance with sections 88 and 89 of the *Act*.

The tenant disputed that they were served with the landlord's evidence. The landlord submits that they served the tenant with their materials by registered mail sent on August 19, 2022. The landlord provided a valid Canada Post tracking receipt as evidence of service. I note that the landlord's evidentiary materials consist of previous notices to end tenancy and correspondence which would have been received by the tenant on prior occasions. I therefore am satisfied that the consideration of the landlord's evidence does not infringe upon the principles of procedural fairness and find the tenant is deemed served with the landlord's materials on August 24, 2022, five days after mailing, in accordance with sections 88 and 90 of the *Act*, and in any event has been sufficiently served in accordance with section 71(2)(b) of the *Act* on that date.

#### Issue(s) to be Decided

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

Is the tenant entitled to 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/or arguments are reproduced here. The principal aspects of the tenant's claims and my findings around each are set out below.

The parties agree on the following facts. This tenancy began on September 1, 2021. Monthly rent is \$1,975.00 payable on the first of each month. The tenant did not pay the rent by the first of the month on September, October, November and December 2021 and January, February and April 2022. The landlord issued 10 Day Notices to End Tenancy for Unpaid Rent on each occasion and the tenant eventually made payment reinstating the tenancy. The landlord also issued written warning letters about the need to pay rent on the date due under the tenancy agreement on October 22, 2021 and December 6, 2021.

The landlord issued a 1 Month Notice dated April 26, 2022 which the tenant confirms receiving on that date. The reason provided on the notice for the tenancy to end is that the tenant has been repeatedly late in paying rent.

Since the issuance of the 1 Month Notice the tenant has been late paying rent on May, July and August, 2022. The tenant has not made any payment for the month of September as at the date of the hearing, September 8, 2022. The parties agree that any payments received after the issuance of the 1 Month Notice has been clearly indicated to be for use and occupancy only and does not reinstate the tenancy.

The tenant gave lengthy testimony about how they believe that rent should not be payable on the first of the month if the first is a statutory holiday, their difficulties attending a bank to obtain bank drafts for payment, ongoing communication with agents of the landlord and their dissatisfaction that the landlord is unwilling to accommodate other forms of payment. The tenant submits that their personal items were removed from their storage locker and placed with the landlord's items for which the landlord provided no apology or explanation. The tenant believes that the current 1 Month Notice was issued as a retaliatory measure in response to the tenant's complaints about missing items.

### 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.

In the present case the parties agree that the tenant was issued a 1 Month Notice on April 26, 2022 and filed their application for dispute resolution on May 6, 2022. Therefore, I find the tenant was within the statutory timeline to dispute the notice.

When a tenant files an application to dispute, the landlord bears the burden to prove 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. In the matter at hand the landlord must demonstrate that the tenants have been repeatedly late paying rent. Residential Tenancy Policy Guideline 38 provides that three late payments are the minimum number to justify a notice to end tenancy.

I accept the undisputed evidence of the parties that rent is due on the first of each month. I accept the evidence that the tenant failed to pay rent as required under the tenancy agreement by the first for each of the months of September, October, November and December 2021 and January, February and April 2022. Accordingly, I find that the tenant has been repeatedly late paying rent giving rise to a basis to end this tenancy.

I find the tenant's submission that payment cannot be made when the first of the month falls on a statutory holiday to be unreasonable and have no statutory basis. I further find the tenant's complaints about the method of payment accepted by the landlord and the inconvenience to them to arrange for payment to not give rise to the ability to breach the tenancy agreement by failing to make payment on the date due. The onus is on the tenant to arrange for payment of the full amount of rent by the due date. I find the tenant's 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.

I further accept the evidence of the parties that the tenant has continued to make late payment after the issuance of the 1 Month Notice on April 26, 2022 on May, July and August 2022 and have failed to make any payment for September 2022. I accept the undisputed evidence of the parties that the landlord clearly indicated that any payments were being accepted for use and occupancy only and did not reinstate the tenancy.

I therefore dismiss the tenant's application to dispute the 1 Month Notice.

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 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 is signed and dated and provides the reasons for ending the tenancy, the repeated late payment of rent.

As I have dismissed the tenant's application to dispute the 1 Month Notice, I find that the landlords are entitled to an Order of Possession pursuant to section 55 of the *Act*. While the landlord submits that they may delay in serving and enforcing the order, as the effective date has passed, I find it appropriate to issue an Order of Possession effective 2 days after service.

I find insufficient evidence in support of the portion of the tenant's application seeking an order for return of personal possessions. The tenant's own submission is that items have gone missing but they do not believe the landlord is holding any of their property. The tenant did not provide an itemized list of items they believe they have lost and their documentary evidence consists of copies of their correspondence to the landlord complaining about items misplaced. I find the evidence to be insufficient to meet their onus to demonstrate the existence of personal possessions and that it is being held by the landlord. Consequently, I dismiss this portion of the tenant's application.

### Conclusion

The tenant's 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: September 8, 2022

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Residential Tenancy Branch