



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, 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 One Month Notice) pursuant to section 47; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issue – Tenants request to adjourn

At the outset of the hearing the tenant requested that the matter be adjourned. The tenant stated that she was recently in hospital and asked for a week or two extension. The landlord was opposed to the adjournment. The landlord testified that he has waited four months for this hearing. The landlord testified that the tenant didn't even serve him notice of this hearing and that he had to find out about it through his own diligence. The landlord testified that the tenant has not provided any documentary evidence to dispute the notice nor any documentation to support her allegation that she was in the hospital.

When a party makes an application, the expectation is that they will diligently pursue and prepare for the hearing, to serve notice of the hearing to the other party along with all documentary evidence, the tenant hasn't done anything. In addition, the tenant did not provide any documentation to support her statement that she was hospitalized. I find that it would be prejudicial and unfair to grant an adjournment under these circumstances. The request was denied, the hearing proceeded and completed on this day.

Issues(s) to be Decided

Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

TN gave the following testimony. The tenancy began on March 1, 2020 with the current rent of \$1928.50 due on the first of each month. The landlord issued a One Month Notice to End Tenancy for Cause on May 2, 2022 for the following reason:

***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;*

TN testified that the tenants have been late in paying the rent for the following months:

June 2021, July 2021, August 2021, September 2021, December 2021, January 2022 and February 2022. TN testified that he should be entitled to an order of possession. TN disputes that there was an agreement to allow for late payments.

The tenant gave the following testimony. The tenant agreed that she was late in paying the rent for three of the months as claimed but submits that she and the landlord had a verbal agreement allowing late payments. The tenant testified that she is actively looking and if given enough time she will move out.

### Analysis

When a landlord issues a notice to end tenancy, they bear the burden of providing sufficient evidence to support the issuance of the Notice. The landlord needs only demonstrate that one of the reasons identified in the One Month Notice is valid in order to end a tenancy for cause.

In this case, the landlord has submitted undisputed evidence that the tenant paid rent late on at least three occasions since June 2021. The landlord's documentation clearly shows a pattern of repeatedly late payments.

Residential Tenancy Policy Guideline #38 provides the following guidance regarding the circumstances whereby a landlord may end a tenancy where the tenant is repeatedly late paying rent.

*Three late payments are the minimum number sufficient to justify a notice under these provisions...*

*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...*

There is clear evidence that the written tenancy agreement requires the tenants to pay all of the rent by the first of each month. The evidence presented indicates that the tenants have been late in paying their rent on at least three occasions. For these reasons, I am satisfied that there is a recurring pattern of late payment of rent during this tenancy and that the landlord had adequate grounds to issue the One Month Notice for the tenant's late payment of rent.

Section 55 of the *Act* reads in part 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 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 find that the landlord's One Month Notice was issued on the correct form and included all of the required information in order to comply with section 52 of the *Act* as to the form and content of that Notice. I dismiss the tenant's application to cancel the One Month Notice and issue the landlord an Order of Possession in accordance with section 55(1) of the *Act*.

### Conclusion

I dismiss the tenant's application without leave to reapply. The One Month Notice to End Tenancy for Cause dated May 2, 2022 with an effective date of June 30, 2022 is confirmed, it is of full effect and force. I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant 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 12, 2022

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Residential Tenancy Branch