



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      LL: OPC  
                              TT: CNC

### Introduction

This hearing dealt with applications from both the landlord and tenants pursuant to the *Residential Tenancy Act* (the “*Act*”).

The landlord applied for an Order of Possession pursuant to section 55.

The tenant applied for cancellation of the landlord’s 1 Month Notice to End Tenancy for Cause (the “1 Month Notice”) pursuant to section 47.

Both parties attended the hearing and were given an opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

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.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing the landlord requested to amend their application to add a claim for recovery of unpaid rent for the tenancy. The landlord testified that they had filed an amendment with the Branch but the dispute management system does not have

any records of such an amendment being filed. Nevertheless, the parties both agreed that they were prepared to address the issue of unpaid rent. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure as I find the issue of unpaid rent is reasonably foreseeable and with the consent of both parties, I amend the landlord's application to include a monetary claim for unpaid rent, damages and loss pursuant to section 67.

### 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 landlord entitled to a monetary award as claimed?

### 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 arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. The monthly rent under the current tenancy agreement is \$1,200.00 payable on the first of each month. The landlord holds a security deposit of \$600.00 for this tenancy. The tenants have been late in paying the rent in full for November and December 2021 and January, February and March 2022.

The landlord issued the 1 Month Notice dated April 30, 2022 indicating the reasons for the tenancy to end as:

- *Tenant is repeatedly late paying rent.*
- *Tenant has allowed an unreasonable number of occupants in the unit/site*

A copy of the 1 Month Notice was submitted into evidence. The tenant confirmed receipt of the 1 Month Notice on April 30, 2022 and filed their application for dispute resolution on May 1, 2022.

The tenant testified that they have been repeatedly late in paying rent on the months cited by the landlord for the months cited and have ceased paying any rent as of April 2022. The tenant gave some testimony complaining about their situation and landlord's conduct.

The parties agree that the total rental arrear as of the date of the hearing is \$7,200.00.

### 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 with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, 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.

The landlord cited repeated late payment and an unreasonable number of occupants as the causes for ending the tenancy in the 1 Month Notice dated April 30, 2022. Residential Tenancy Policy Guideline 38 provides that three late payments are the minimum number to justify a notice to end tenancy.

The parties agree that the tenants were late in paying rent for November and December 2021 and January, February and March 2022. Accordingly, I find the tenants were repeatedly late in paying rent and there was a basis for the issuance of the 1 Month Notice.

I find the Notice meets the form and content requirements of the *Act* as it is signed and dated by the landlord, correctly identifies the rental address, the parties and gives the reason for the tenancy to end.

Therefore, I dismiss the tenant's application and issue an Order of Possession in the landlord's favour. As the effective date of the 1 Month Notice has long passed, I issue an Order enforceable 2 days after service on the tenants.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I accept the undisputed evidence of the parties that monthly rent for this tenancy is \$1,200.00 and the tenants have failed to pay rent for April, May, June, July, August and September 2022. I accept the agreed upon evidence of the parties that the total unpaid rent for this tenancy is \$7,200.00. Accordingly, I issue a monetary award in that amount in the landlord's favour.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenants' security deposit in partial satisfaction of the monetary award issued in the landlord's favour

### Conclusion

I grant an Order of Possession to the landlords 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.

I issue a monetary order in the landlord's favour in the amount of \$6,600.00, representing the unpaid rent for the tenancy and the retention of the security deposit. The tenants must be served with this Order as soon as possible. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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: September 23, 2022

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Residential Tenancy Branch