



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

Parties	File No.	Codes:
(Tenants) C.R. and R.R.	110075288	CNC
(Landlord) R.D. and K.P.	910075981	OPC, MNRL, FFL

### Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties.

The Tenants applied for:

- An Order cancelling a One Month Notice to End Tenancy for Cause dated June 1, 2022 ("One Month Notice").

The Landlords applied for:

- An Order of Possession, based on the One Month Notice;
- A Monetary Order of \$1,603.70 for unpaid rent; and
- recovery of their \$100.00 application filing fee;

However, early in the hearing, the Landlords said that the Tenants have paid their rent owing in full, and therefore, that the Landlords withdrew their monetary claim.

The Tenant, C.R., and the Landlords, K.P. and R.D., appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process.

During the hearing the Tenant and the Landlords were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. 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.

I considered service of the Notices of Dispute Resolution Hearing and the Parties’ evidence. 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 Tenant testified that she served the Landlords with her Notice of Hearing documents and evidence by putting it in their mail box. The Tenant did not remember the date on which she served these documents, but she said that it was on time. The Landlord said that these documents were put in their mail box or slot on June 27, 2022 or four days after the RTB emailed the initial notice package to the Tenant.

**Rule 3.1** states that the applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the RTB, serve each respondent with copies of all of the following:

- a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
- b) the Respondent Instructions for Dispute Resolution;
- c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and
- d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution]. .

[emphasis added]

**Rule 10.9** states:

An applicant must provide proof of service by submitting RTB 9 Proof of Service – Notice of Dispute Resolution form one day after serving the Notice of Dispute Resolution Proceeding Package and at least two days before the hearing. Failure to do this may result in the application being dismissed or the hearing being rescheduled or adjourned to a later date.

Given the evidence before me on this matter, I find that it is more likely than not that the Tenants failed to serve the Landlords pursuant to the timeline set out in the Rules. As such, and pursuant to the Rules and section 62 of the Act, I **dismiss the Tenants' Application without leave to reapply** for failing to serve the Landlords in compliance with the Rules.

The Landlords said they served each Tenant with their Notice of Hearing package and evidence via registered mail sent on July 6, 2022. The Landlords provided Canada Post tracking numbers as evidence of service. The Landlords also submitted a Proof of Service form in their evidence confirming this.

The Tenant said that she had received a number of registered mail notices, but that she is going through another issue at the moment for which she receives registered mail. The Tenant acknowledged that she did not know this registered mail was from the Landlords and that, no, she did not pick up these packages after receiving the registered mail notices in the mail.

According to Residential Tenancy Branch Policy Guideline 12: 'Where the Registered Mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.' Accordingly, I find the Landlords served the Notices of Hearing to the Tenants on July 7, 2022, the date indicated in the Canada Post website on which a notice card was left with the Tenants indicating that the registered mail packages were available for pick up.

I find that the Tenants were deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Landlords' Application and evidentiary documents.

#### Preliminary and Procedural Matters

The Parties provided their email addresses in their applications and they confirmed these addresses in the hearing. They also confirmed their 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 Landlords that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Should the One Month Notice be cancelled or confirmed?
- Are the Landlords entitled to an Order of Possession?
- Are the Landlords entitled to recovery of their Application filing fee?

Background and Evidence

The Parties agreed that the fixed-term tenancy began in 2016 and proceeded by annual lease thereafter. They indicated that the Tenants are required by the tenancy agreement and periodic rent increases to pay the Landlords a (current) monthly rent of \$1,603.70, due on the first day of each month. The Parties agreed that the Tenants paid the Landlords a security deposit of \$750.00, and no pet damage deposit. The Landlords confirmed that they still hold the security deposit in full.

The Landlords provided a copy of the One Month Notice, which was signed and dated June 1, 2022, and which has the rental unit address. The One Month Notice was served by registered mail and by attaching a copy to the rental unit door where the Tenants reside on June 1, 2022. The One Month Notice was served on the ground that the Tenants are repeatedly late paying rent, with the May 2022 rent having been paid on June 1, 2022. The Landlords submitted a proof of service form for the One Month Notice, including a tracking number for having sent it by registered mail.

In the hearing, in answer to my question of why I should grant them an order of possession based on the One Month Notice, the Landlord said:

The Tenants are consistently and repeatedly late on the rent. We have bent over backwards in the last several years to assist them, but we are at the point now that enough is enough. The rent has been getting later and later – on the 10<sup>th</sup>, 15<sup>th</sup>, 20<sup>th</sup>, even 30 days late, since July. They have been paying it, but we never knew how much and when we are getting any rent.

There is also our bank statements showing the late rent going back to the last lease.

The Tenant responded, as follows:

I don't dispute one bit that we've been late on rent. The last six years have been all over the place. [The Landlord] has been very kind and forgiving of us, and has

always told us, 'Okay, just get it to us'. They've never expressed that they have an issue with it. They have quite often expressed that they understand, because they know we own a business, and we get paid when contractors pay us. They don't always pay, and there are many different reasons why our cheques are not consistent.

Since May, a friend of mine tried to pay rent in May, and that was refused. I wasn't aware of it until we paid June rent on June 1<sup>st</sup> and he said it's for May's rent – it put us quite behind.

All of a sudden, we're getting this... after confiding about [K.P.] about some personal issues that were going on - and I was hit with this and felt very... - it's quite unfair, because there was no other warning or being spoken to about our late rent for the last six years.

The Landlord responded:

What happened was in the months she's talking about, our neighbours on the other side had to get out of their house because it sold. They are a family of two parents, a child and two dogs, and they moved into [the rental unit] – [the Tenant's] home. We had decided that that was not acceptable and we served them with a 10 Day Notice, because they hadn't paid rent. This was on May 14 – two weeks late - and at the 11<sup>th</sup> hour, the people who had moved in tried to pay their rent with an etransfer, and we didn't know that.

They had five days to pay the rent. At 10 or 11 on the last day they send an etransfer in [their friend's] name. We didn't accept that payment, because we weren't sure the legality of what that would entail. We called the RTB and asked if we accepted that rent did that make the One Month Notice [ineffective]? We got two different opinions from the RTB. We erred on the side of caution and refused to take that payment.

The next day, their friends all moved out and that payment was cancelled. That etransfer had been cancelled. Then we received payment from [the Tenants] on June 1 – a month late.

That was because we refused to accept the payment from a non-tenant. Her family and two large dogs and there are no pets allowed. Basically, it's been all downhill since then from there. Late: 10, 15, 27 days late, and the last one was

October 14<sup>th</sup> for October. So, it's progressively worse, unfortunately.

The Tenant replied:

[Our friend] was not living here, the dogs did not stay here, they stayed at a friend's farm or in her car. They spent a few nights here from time to time until – she tried to pay the rent on our behalf.

I asked the Tenant if she had let the Landlords know that someone else would be paying rent for them, and she said:

I don't recall if I mentioned it – I did mention that [my friend] was sending my rent in a text message. But they would not respond to any text messages I sent. Then the next day, [my friend] left – I thought she had gone to her sister's house and my communication with [her] had stopped, so I had no idea that rent was refused – not accepted. I had no idea until June 1 that May still hadn't been paid. They didn't send me a message saying, 'hey we're not accepting this, it's got to be coming from you.'

In her final statements, the Tenant said:

Since May's rent wasn't accepted – we've been playing catch up. I don't deny that we've been late with rent. I wish they hadn't stopped communicating with us after the eviction notices were served. They cut communication via text or phone. There's been registered mail, but I've been dealing with another matter. I admit I didn't go and pick up our registered mail, which was wrong I know, I didn't always pick it up. I'm not aware of any other problems, but if we had known that this was a big issue for the last six years. There's no way I'd want to risk a family home. I have three children.

The Landlords' undisputed evidence includes statements indicating that the Tenants paid rent late, as follows: on October 4, 2021., November 2, 2021, December 9, 2021, January 10, 2022, March 3, 2022, April 12, 2022, and not until June 1, 2022, for the May 2022 rent.

### Analysis

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

Section 47 of the Act allows the landlord to end a tenancy for cause:

**47(1)** A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- (a) the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;
- (b) the tenant is repeatedly late paying rent;
- (c) there are an unreasonable number of occupants in a rental unit;
- ...

Policy Guideline #38, "Repeated Late Payment of Rent" ("PG #38"), states:

The *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act* both provide that 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.

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.

[emphasis added]

In this case, the Landlords assert that the Tenants are consistently and repeatedly late paying their rent. The Tenant did not deny this was the case, although, she said she had never been advised by the Landlords that this was a problem for them. The Tenant said that this had been going on for six years, given the nature of the Tenants' business. However, the Tenant did not direct me to any section of the legislation that prevents a landlord from enforcing a provision of the Act after having acquiesced on the tenant's non-compliance with the Act in some way. PG #38 states that a landlord must act in a timely manner after the most recent late payment. However, in the case before me, the Landlords served the Tenants with the One Month Notice on June 1, 2022, the same day on which the Tenant paid the amount owing for May 2022.

When I consider all the evidence before me overall, I find that the Landlords have provided sufficient evidence to meet their burden of proof on a balance of probabilities, and to support the validity of the One Month Notice. I also find that the One Month Notice issued by the Landlords complies with section 52 of the Act as to form and content. Given the above, and pursuant to section 55 of the Act, I find that the Landlords are entitled to an Order of Possession.

Accordingly, and **pursuant to section 55** of the Act, I grant the Landlords an Order of Possession for the rental unit. Given that the effective vacancy date has passed, the **Order of Possession will be effective two days** after the Tenants receive the Order.

Given their success in this matter, I also **award the Landlords** with recovery of their **\$100.00** Application filing fee from the Tenants, pursuant to section 72 of the Act. I authorize the Landlords to retain \$100.00 from the Tenants' \$750.00 security deposit in complete satisfaction of this Order, pursuant to section 72 of the Act.

### Conclusion

The Tenants' application is dismissed without leave to reapply, as the Tenants failed to serve the Landlords with their Notice of Hearing documents and evidence in compliance with the Rules.

The Landlords are successful in their application for an Order of Possession of the rental unit, pursuant to having served the One Month Notice, as they provided sufficient, undisputed evidence that the Tenants are repeatedly late in paying rent.

Pursuant to section 55 of the Act, I grant an **Order of Possession** to the Landlords effective **two days after service of this Order** on the Tenants. The Landlords are



provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible.

The Landlords are also awarded recovery of their **\$100.00 Application filing fee** from the Tenants. The Landlords are authorized to **retain \$100.00 from the Tenant's \$750.00 security deposit** in complete satisfaction of this award.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: October 31, 2022

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Residential Tenancy Branch