



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

CNC, OLC, FFT

### Introduction

A hearing was convened on September 15, 2022 in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to cancel a One Month Notice to End Tenancy for Cause, for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* and/or the tenancy agreement, and to recover the fee for filing this Application for Dispute Resolution. At the hearing on September 15, 2022 the Tenant clarified that the application for an Order requiring the Landlord to comply with the *Act* and/or the tenancy agreement relates to his submission that the Landlord did not have the right to end the tenancy for the reasons cited in the One Month Notice to End Tenancy for Cause.

The Tenant stated that the Dispute Resolution Package was sent to the Landlord, via registered mail, although he cannot recall the date of service. The Landlord stated that he received these documents in May of 2022. On the basis of this testimony, I find that these documents have been served in accordance with section 89 of the *Act*.

On May 09, 2022 and September 01, 2022, the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was personally served to the Landlord on August 31, 2022. The Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The hearing on September 15, 2022 was adjourned. The hearing was reconvened on October 14, 2022 and was concluded on that date.

As stated in my interim decision, I concluded that at least some of the Landlord's evidence was highly relevant and would likely assist me in making a fair and correct decision in this matter. As stated in my interim decision, I adjourned the hearing on September 15, 2022 to provide the Landlord with the opportunity to re-serve his evidence package to the Tenant.

In my interim decision, I granted the Landlord authority to re-serve the Tenant with the evidence package the Landlord submitted to the Residential Tenancy Branch on August 12, 2022. At the hearing on September 15, 2022 the Tenant denied receiving the Landlord's evidence, which the Landlord testified was mailed to the Tenant.

At the hearing on October 14, 2022, the Landlord stated that the Landlord's evidence package of August 12, 2022 was sent to the Tenant on September 29, 2022, by email and by registered mail. The Tenant denied receipt of these documents.

At the hearing on October 14, 2022, the Landlord acknowledged that he did not submit any evidence to corroborate his testimony that the Landlord's evidence was served to the Tenant on September 29, 2022. The Landlord stated that he was unable to find his Canada Post receipt so he is not able to provide the tracking number for the evidence that was allegedly sent on September 29, 2022. In my interim decision I clearly informed the Landlord that he "must be prepared to prove service of these documents at the reconvened hearing".

I find that the Landlord submitted insufficient evidence to establish that the evidence package of August 12, 2022 was served to the Tenant in accordance with section 88 of the *Act*. As the Tenant does not acknowledge receiving the evidence and the Landlord has not met the burden of proving it was served, the Landlord's evidence was not accepted as evidence for these proceedings.

Although I still believe that at least some of the Landlord's evidence is highly relevant, I find it is not reasonable to adjourn the hearing again to provide the Landlord with a third opportunity to re-serve his evidence package. In reaching this conclusion I was influenced, in large part, because the "need" for the adjournment arises out of the intentional actions or neglect of the Landlord. The Landlord was given a fair opportunity to serve evidence to the Tenant and to provide proof of that service, which the Landlord failed to do.

My conclusion that it was not reasonable to adjourn the hearing again to provide the Landlord with a third opportunity to re-serve his evidence package was also based on my conclusion that a second adjournment would be prejudicial to the Tenant. I find it would be unfair to the Tenant to delay these proceedings any further, as living with an uncertain tenancy is stressful.

In my interim decision, I granted the Tenant authority to submit evidence to the Residential Tenancy Branch in response to the Landlord's evidence package of August 12, 2022.

The Tenant submitted evidence to the Residential Tenancy Branch on October 11, 2022. As the Tenant does not acknowledge ever receiving the Landlord's evidence package of August 12, 2022, I cannot conclude that any of the evidence he submitted on October 11, 2022 was in response to the Landlord's evidence package. As the Tenant was only given authority to submit evidence that is in response to the Landlord's evidence, the evidence the Tenant submitted on October 11, 2022 was not accepted as evidence for these proceedings.

As outlined in my interim hearing, the parties only had the right to submit/serve evidence that was specified in my decision. Apart from those specific documents, neither party had the right to submit additional evidence now that the proceedings have commenced.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

#### Issue(s) to be Decided

Should the One Month Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?

#### Background and Evidence presented on September 15, 2022

The Landlord and the Tenant agree that:

- this tenancy began on June 01, 2021;
- rent of \$2,650.00 is due by the first day of each month;

- the One Month Notice to End Tenancy for Cause declared that the rental unit must be vacated by June 01, 2022;
- the Tenant is still living in the rental unit; and
- the One Month Notice to End Tenancy for Cause declares that the tenancy is ending because the tenant has been repeatedly late paying her rent; that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; that the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful interest of another occupant or the landlord; that the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk; that the tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or well-being of another occupant; that the tenant has engaged in illegal activity that has, or is likely to, damage the Landlord's property .

The Landlord stated that on May 30, 2022 the One Month Notice to End Tenancy for Cause was sent to the Landlord by email and by registered mail. The Tenant stated that he received the One Month Notice to End Tenancy for Cause by email on April 01, 2022 and he received it by mail approximately one week later.

The Landlord stated that the Tenant did not pay rent for April of 2022 until April 05, 2022; that the Tenant did not pay rent for March of 2022 until March 07, 2022; and that the Tenant did not pay rent for December of 2021 until December 21, 2021.

The Tenant stated that he paid rent for April of 2022 on April 01, 2022; that he paid his rent for March of 2022 on March 01, 2022; and that he paid his rent for December of 2021 on December 08, 2021.

The Landlord stated that the Tenant has never paid rent for July of 2021; that the Tenant did not pay money to his contractor in June of 2021; and he did not tell the Tenant he could pay money to his contractor in lieu of rent for July of 2021.

The Tenant stated that in lieu of paying rent for July of 2021, he paid the Landlord's contractor \$3,200.00 on June 15, 2021. He stated that the Landlord agreed this payment would be applied to rent owed for July of 2021.

The Landlord stated that he wished to end this tenancy, in part, because of an incident that occurred on September 13, 2021. He stated that on September 13, 2021:

- he was advised that the police were at the rental unit;
- he went to the unit and observed the police knocking on the door of the rental unit;
- the Tenant did not answer the door;
- he does not know if the Tenant was at home at the time of the police attendance; and
- the police told him that he should evict the Tenant because he was not cooperating with the police.

The Tenant stated that he was not home when the police were at his home on September 13, 2021 and he still does not know why they were at his home.

The Landlord stated that he wished to end this tenancy, in part, because of an incident that occurred on January 14, 2022. He stated that on January 14, 2022:

- the Tenant told the Landlord he was concerned about the presence of garbage in the lower suite;
- he spoke with the occupants of the lower suite about the garbage;
- the Tenant became engaged in a dispute with the occupants of the lower suite;
- the occupants of the lower suite told him they closed the door while they were communicating with the Tenant because the Tenant was becoming aggressive;
- the occupant of the lower suite told him that the Tenant had turned off the heat;
- he spoke with the Tenant and told the Tenant to turn the heat on;
- when he spoke with the Tenant, the Tenant told him he was not at home;
- the Tenant told the Landlord that the occupants of the lower suite should speak with him before the heat is turned back on;
- he went to the unit in the evening and turned the breaker on, which restored the heat; and
- the Tenant never admitted that he turned the breaker off.

The Tenant stated that all of the information provided by the Landlord is false, with the exception of the fact he complained about garbage in the lower unit. He stated that he did not turn the heat off and he thinks a circuit breaker tripped, causing the heat to stop working.

The Landlord stated that he wished to end this tenancy, in part, because the Tenant damaged the drywall, by creating a hole that is approximately 15 cm X 10 cm. He stated that he does not know if the damage has been repaired.

The Tenant stated that the hole in the drywall occurred when he was moving a dresser and that it was repaired within 5 days of the damage occurring.

#### Background and Evidence presented on October 14, 2022

The Landlord stated that rent for January of 2022 was paid on January 04, 2022. The Tenant stated that he does not have his records with him so he is not certain when his rent for January was paid.

The Landlord stated that rent for February of 2022 was paid on February 04, 2022. The Tenant stated that he believes he paid his rent for February on February 04, 2022.

When the Tenant was asked if he had any documents that corroborated his testimony that the Landlord agreed he could pay the Landlord's contractor in lieu of rent for July, the Tenant read out an electronic communication Landlord sent to him on August 01, 2021. The excerpt read out by the Tenant is reproduced below:

*Hi Dan,  
Send me the list of expenses until now it happened and the repair work that fixed until now. You will be sending the rent today right as it's rent day and we can't meet today. U pay the rent today and we will discuss the expenses part tomorrow when we meet and I will pay u back as I said ok?*

#### Analysis

On the basis of the undisputed evidence, I find that the Landlord and the Tenant have a tenancy agreement which requires rent to be paid by the first day of each month.

Section 47(1) of the *Residential Tenancy Act (Act)* permits a landlord to end a tenancy by giving notice to end the tenancy if:

- 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;
- (d) the tenant or a person permitted on the residential property by the tenant has

- (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
- (iii) put the landlord's property at significant risk;
- (e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
  - (i) has caused or is likely to cause damage to the landlord's property,
  - (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
  - (iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- (f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;
- (g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) [*obligations to repair and maintain*], within a reasonable time;
- (h) the tenant
  - (i) has failed to comply with a material term, and
  - (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;
- (i) the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 [*assignment and subletting*];
- (j) the tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property;
- (k) the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;
- (l) the tenant has not complied with an order of the director within 30 days of the later of the following dates:
  - (i) the date the tenant receives the order;
  - (ii) the date specified in the order for the tenant to comply with the order.

Although the Landlord testified that he sent the Tenant a copy of the One Month Notice to End Tenancy for Cause, via email and via registered mail, on May 30, 2022, I find the alleged date of service to be highly unlikely. Although the One Month Notice to End Tenancy for Cause is dated May 30, 2022, the Tenant filed this Application for Dispute Resolution on May 09, 2022. I therefore find, on the balance of probabilities, that the

Landlord dated the One Month Notice to End Tenancy for Cause incorrectly and that he is basing his alleged date of service on the date of the One Month Notice to End Tenancy for Cause.

At the hearing the Tenant testified that he received the emailed copy of the One Month Notice to End Tenancy for Cause on April 01, 2022 and the mailed copy approximately one week later. In his Application for Dispute Resolution the Tenant declared that he received the One Month Notice to End Tenancy on May 09, 2022, via registered mail.

Given the passage of time, I find the Tenant's testimony that he received the One Month Notice to End Tenancy for Cause in April of 2022 to be less reliable than the information provided on May 09, 2022, which was that he received the One Month Notice to End Tenancy for Cause on May 09, 2022. I therefore find, on the balance of probabilities, that the One Month Notice to End Tenancy for Cause was received on May 09, 2022.

Section 47(2) of the *Act* stipulates that a notice to end tenancy that is served pursuant to section 47 of the *Act* must end the tenancy on a date that is not earlier than one month after the date the notice is received, and the day before the day in the month, or in the other period on which the tenancy is based, that rent is due.

As I have concluded that the Tenant received the One Month Notice to End Tenancy for Cause on May 09, 2022 and the rent is due by the first day of each month, the earliest effective date of the One Month Notice to End Tenancy for Cause was June 30, 2022. I therefore amend the effective date of the One Month Notice to End Tenancy for Cause to June 30, 2022, pursuant to sections 53(1) and 53(2) of the *Act*.

On the basis of the One Month Notice to End Tenancy for Cause submitted in evidence, I find that the Notice informed the Tenant that the tenancy was ending in accordance with sections 47(1)(b); 47(1)(d); 47(1)(e)(i) and 49(1)(e)(ii) of the *Act*.

The Landlord only needs to establish grounds for one of those reasons.

I find that the Landlord has established grounds to end this tenancy pursuant to section 47(1)(b) of the *Act* (repeatedly late paying rent).

On the basis of the undisputed evidence, I find that the Tenant did not pay rent by the time it was due on December 01, 2021. Regardless of whether it was paid on December 21, 2021, as the Landlord contends, or it was paid on December 08, 2021, as the Tenant contends, it was clearly not paid on time.



I find that the rent was not paid by the time it was due on January 01, 2022. In reaching this conclusion I was heavily influenced by the undisputed testimony of the Landlord, who stated that it was paid on January 04, 2022. Given that the Tenant stated that he did not recall when he paid his rent for January of 2022 because he did not bring his records to the hearing, I find it reasonable to rely on the testimony of the Landlord. The Tenant was well aware that the Landlord was alleging rent had not been paid on time and I find it would have been reasonable for the Tenant to respond to those allegations by bringing his records to the hearing .

On the basis of the undisputed evidence I find that the Tenant did not pay rent when it was due on February 01, 2022. Both parties testified that it was paid on February 04, 2022.

I find that the Landlord has submitted insufficient evidence to establish that rent was not paid when it was due on March 01, 2022. In reaching this conclusion I was heavily influenced by the absence of accepted evidence that corroborates the Landlord's submission that it was paid on March 07, 2022 or that refutes the Tenant's submission that it was paid on March 01, 2022.

I find that the Landlord has submitted insufficient evidence to establish that rent was not paid when it was due on April 01, 2022. In reaching this conclusion I was heavily influenced by the absence of accepted evidence that corroborates the Landlord's submission that it was paid on April 05, 2022 or that refutes the Tenant's submission that it was paid on April 01, 2022.

Section 38 of the Residential Tenancy Branch Policy Guidelines, with which I concur, suggest that three late payments are the minimum number sufficient to justify a notice under these provisions. As the Tenant has been late with rent on the aforementioned three occasions, I am satisfied that the Landlord has grounds to end the tenancy pursuant to section 47(1)(b) of the *Act*.

As the Landlord has established that the Tenant did not pay rent on time on at least 3 occasions, I find it is not necessary for me to determine whether rent was paid on time in July of 2021.

As I have determined that the Landlord has grounds to end the tenancy pursuant to section 47(1)(b) of the *Act*, I find it is not necessary to determine whether there are also

grounds to end tenancy pursuant to sections 47(1)(d) and 47(1)(e) of the *Act*.

As I have found that the Landlord has grounds to end this tenancy pursuant to section 47(1)(b) of the *Act*, I dismiss the Tenant's application to set aside the One Month Notice to End Tenancy for Cause.

Section 55(1) of the *Act* stipulates that 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 the landlord's notice to end tenancy complies with section 52 of the *Act*, and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As I am satisfied that the One Month Notice to End Tenancy complies with section 52 of the *Act* and I have dismissed the application to set aside the One Month Notice to End Tenancy for Cause. I must grant the Landlord an Order of Possession. I therefore grant the Landlord an Order of Possession, pursuant to section 55(1) of the *Act*.

I find that the Tenant has failed to establish the merit of this Application for Dispute Resolution and I dismiss the application to recover the for filing the Application.

### Conclusion

The Application for Dispute Resolution is dismissed, without leave to reapply.

I grant the Landlord an Order of Possession that is effective on **October 31, 2022**. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, 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 *Act*.

Dated: October 16, 2022

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Residential Tenancy Branch