



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

<u>Dispute Codes</u>	Tenant application:	CNR, RP, FF
	Landlord application 1:	OPC
	Landlord application 2:	OPR, MNR, FF

### Introduction

This hearing was convened as the result of the cross and repeat applications (application) of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The tenants applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) issued by the landlord, an order requiring the landlords to make repairs to the rental unit, and recovery of the cost of the filing fee.

The landlord filed two applications and the Residential Tenancy Branch (RTB) administratively joined the landlord's second application with the hearing on the parties' cross applications. In their first application, the landlord applied for an order of possession of the rental unit pursuant to a One Month Notice to End Tenancy for Cause (1 Month Notice) served to the tenants.

In their second application, the landlord applied for an order of possession of the rental unit pursuant to a 10 Day Notice served to the tenants, a monetary order for unpaid rent, and recovery of the cost of the filing fee.

The tenants, the landlord, and two parties assisting and representing the landlord attended the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. All parties were affirmed.

Thereafter the parties were provided the opportunity to present their evidence orally, refer to relevant evidence submitted prior to the hearing, respond to the other's

evidence, and make submissions to me. Both parties confirmed receipt of the other's evidence.

I have reviewed all oral and written evidence before me that met the requirements of the RTB Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

#### Preliminary and Procedural Matters-

Although the tenants marked in their application that they were seeking cancellation of a 10 Day Notice, the evidence filed by the tenants showed their dispute actually was a request seeking cancellation of a 1 Month Notice. As a result, I find it necessary to amend the tenants' application changing their dispute to cancellation of the 1 Month Notice.

I also have severed the portion of the tenants' application seeking a repair order, as I find that request unrelated to the primary issues in these matters, and that was cancellation or enforcement of the 2 Notices. I will determine the disposition of the tenants' repair requests at the conclusion of the Decision.

#### Issue(s) to be Decided

Are the tenants entitled to cancellation of the 1 Month Notice and recovery of the cost of the filing fee?

Is the landlord entitled to enforcement of the 10 Day Notice and recovery of the cost of the filing fee?

Is the landlord entitled to enforcement of the 1 Month Notice?

### Background and Evidence

The testimony indicated that the tenancy first began on April 1, 2021, for a monthly rent of \$3,600, with the tenants having paid a security deposit of \$1,800. The tenants' rent increased by 1.5% on May 1, 2022, by way of a notice of a rent increase, according to the landlord by way of the agent, PM. PM said the tenants were served the Notice of Rent Increase in January 2022, for an effective date of May 2022.

Although a written tenancy agreement was filed in evidence, showing a new tenancy start date of April 1, 2022 and monthly rent of \$3,800, the monthly rent remained at \$3,600 until the rent increase in May 2022 to \$3,654, according to the evidence submitted at the hearing.

The landlord's agent, PM, testified about the tenants' history of rent payments during this tenancy to support the allegation of repeated late payments, as listed on the 1 Month Notice, and the rent deficiency listed on the 10 Day Notice.

As to the 10 Day Notice, PM said the Notice was attached to the tenants' door on July 2, 2022. The tenants confirmed receiving the Notice, however, they did not file to dispute it.

The Notice listed an outstanding rent deficiency of \$1,554 owed as of July 1, 2022. PM testified as to the history of the tenants' rent payments, as shown on the accounting on the rent history document filed in evidence. The rent history document showed the tenants' rent payments owed and dates paid, from October 2021. PM testified that there have been many partial, incomplete, and late payments since that time.

As to the July 1, 2022, rent of \$3,654 owed, the landlord listed the amount of \$3,400 owed as the tenants had a \$254 overpayment of rent as of June 3, 2022. The rent history document showed the tenants made a payment of \$2,100 on July 4, 2022, and \$1,500 on July 14, 2022, leaving a rent credit of \$200 at the end of July 2022.

The tenants confirmed not paying all the monthly rent for August, September and October 2022, having paid only \$1,000 altogether.

As to the 1 Month Notice, in their application, the tenants confirmed receiving the document on May 23, 2022, by pre-agreed email.

In their application, the tenants wrote the following:

*The only reason they served the notice was because they tried to raise the rent an extra \$200 and we said no, then the next day we got the email of one month eviction. In March they had sent a proper form to increase by \$54 which is 1.5% and the legal limit but on the new lease agreement just tried to sneak the 200 in and said now we have to pay it because we had already signed it.*

Filed in evidence was a copy of the 1 Month Notice. The 1 Month Notice was dated May 23, 2022, served on May 23, 2022, and listed an effective move-out date of June 30, 2022.

The cause listed on the Notice by the landlord claimed that the tenant is repeatedly late paying rent.

In the Details of Causes, the landlord stated that the “tenant is repeatedly late paying rent since last Sep. 2021. Tenant paid full amount around first week of month firstly. They have paid full amount of end of month recently. This is not good sign for their financial situation”.

### Analysis

Based on the foregoing, relevant evidence, and on a balance of probabilities, I find as follows:

#### *10 day Notice -*

The 10 Day Notice here, served on July 2, 2022, listed unpaid rent of \$1,554 owed as of July 1, 2022, and in looking to the landlord’s rent history document, the tenants made a payment of \$2,100 on July 4, 2022.

Section 46(4) of the Act states within 5 days after receiving the notice under this section, the tenant may pay the overdue rent, in which case the notice has no effect.

As the landlord’s evidence shows the tenants paid more than the outstanding rent listed on the 10 Day Notice within 2 days of receiving the Notice, I find the Notice has no effect. For this reason, I cancel the 10 Day Notice, dated July 2, 2022, and it has no force or effect.

As a result, I **dismiss** the landlord's application seeking an order of possession of the rental unit pursuant to the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice), a monetary order for unpaid rent, and recovery of the cost of the filing fee, without leave to reapply.

*1 Month Notice –*

Upon review of the One Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements as to form and content required by section 52 of the Act and the tenants confirmed receiving it.

Section 47(1)(b) of the Act authorizes a landlord to end a tenancy if the tenant is repeatedly late in paying rent.

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove the tenancy should end for the reason indicated on the Notice.

Under section 26 of the Act, a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations, or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Residential Tenancy Policy Guideline 38 provides that three late payments are the minimum number sufficient to justify a notice under these provisions.

In reviewing the rent history document, I find the landlord submitted sufficient evidence to show that since October 2021, the tenants have not paid the full amount of rent owed on the day the rent was due. From October 2021 through January 2022, the tenants paid the monthly rent in full; however, each payment was late.

Beginning in February 2022, the tenants began making partial rent payments throughout each month.

Given the above, I find the landlord has submitted sufficient evidence to prove on a balance of probabilities that the tenants are repeatedly late paying rent.

I therefore **dismiss** the tenants' application requesting cancellation of the Notice and to recover the cost of the filing fee, without leave to reapply, as I find the Notice is valid, supported by the evidence, and therefore, enforceable. I further **dismiss** the tenants' application for repairs as the tenancy is ending.

As a result, I grant the landlord's application seeking an order of possession of the rental unit based upon the 1 Month Notice.

I find the landlord is entitled to and I **grant** an order of possession of the rental unit **(Order)**, pursuant to section 55 of the Act, effective **two days** after service of the order upon the tenants.

Should the tenants fail to vacate the rental unit pursuant to the terms of the Order after being served, the Order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenants are cautioned that costs of such enforcement, **such as bailiff costs and filing fees**, are recoverable from the tenants.

### Conclusion

The landlord's application for enforcement of the 10 Day Notice is dismissed, without leave to reapply.

The tenants' application for cancellation of the 1 Month Notice, for repairs, and recovery of the cost of the filing fee is dismissed, without leave to reapply.

The landlord's application for an order of possession of the rental unit pursuant to the 1 Month Notice is granted. The landlord has been issued an order of possession effective 2 days after service on the tenants.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: October 18, 2022

---

Residential Tenancy Branch