



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding GAVIOTA HOLDINGS LTD DBA COUNTRY SQUIRE  
APARTMENTS and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, OLC, OPC, FFL

### Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

- an Order of Possession pursuant to section 55; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant requested:

- cancellation of the landlords’ One Month Notice to End Tenancy for Cause (“1 Month Notice”), pursuant to section 47; and
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62

While the landlords attended the hearing by way of conference call, the tenants did not. I waited until 11:10 a.m. to enable the tenant to participate in this scheduled hearing for 11:00 a.m. The landlords were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Rule 7.3 of the Rules of Procedure provides as follows:

### **7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.



CF gave sworn testimony that on October 5, 2022 copies of the Application for Dispute Resolution hearing package ('Application') and evidence were served to the tenants by way of registered mail. CF provided the tracking numbers during the hearing and advised that the packages were served to the tenants by Canada Post on October 6, 2022. In accordance with sections 88 and 89 of the *Act*, I find that the tenants were duly served with copies of the landlords' application and evidence.

### Issue(s) to be Decided

Are the landlords entitled to an Order of Possession based on One Month Notice?  
Are the landlords entitled to recover the filing fee for this application?

### Background and Evidence

CF gave the following testimony. The tenancy began on September 1, 2020 with the rent of \$1725.00 due on the first of each month. The tenants paid a security deposit of \$850.00 which the landlord still holds. The landlord issued a One Month Notice to End Tenancy for Cause on July 15, 2022 for the following reasons:

#### ***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;*

CF testified that the tenants were given two written warnings about late rent, but the pattern didn't improve. CF testified that at the time of issuing the notice, the tenant was late paying the rent for the following months: August 2021 – December 2021 inclusive, March 2022, May 2022 – July 2022 inclusive, for a total of 9 months in the previous 12. CF testified that the tenants were late again for September 2022 despite being served the notice. CF requests an order of possession.

### 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 tenants paid rent late on at least three occasions since August 2021. The landlord's documentation clearly shows a pattern of late payments and despite the tenants being served a notice in July 2022, the tenants' pattern did not change.

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*.

The landlord is entitled to retain \$100.00 from the security deposit for the full recovery of the filing fee.

### Conclusion

I dismiss the tenants application in its entirety without leave to reapply.

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: November 01, 2022

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Residential Tenancy Branch