



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding AI Stober Construction Ltd and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for cancellation of the One Month Notice to End Tenancy for Cause (the Notice), pursuant to section 47.

The respondent landlord called into this teleconference at the date and time set for the hearing of this matter. The respondent was represented by agents SH, AB and TK. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Although I waited until 1:56 P.M. to enable the applicant (tenant) to connect with this teleconference hearing scheduled for 1:30 P.M., the applicant did not attend.

I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the respondent and I were the only persons who had called into this teleconference.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

Preliminary Issue – Service

SH confirmed receipt of the notice of hearing and that he had enough time to review it.

SH mailed the response evidence to the rental unit's address on November 17, 2022. The tracking number is recorded on the cover page of this decision.

Based on SH's convincing testimony and the tracking number, I find the tenant served the notice of hearing in accordance with section 89(1) of the Act and the respondent served the response evidence in accordance with section 89(1) of the Act.

The tenant is deemed served the response evidence on November 22, 2022, per section 90 (a) of the Act.

I note that section 55 of the Act requires that when a tenant submits an application for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Relying on *M.B.B. v. Affordable Housing Charitable Association*, 2018 BSCS 2418, the respondent must still prove the grounds to end the tenancy when a tenant does not appear to present their application to cancel the notice:

[27] I accept that it was open to the arbitrator to proceed with the hearing or dispense with the hearing altogether and decide the matter in the absence of M.B.B., but in doing so, the arbitrator still had to resolve the issue raised by the application on the merits in some way. It was insufficient to dismiss the application solely on the ground that M.B.B. had not dialed in to the hearing within the first ten minutes as she was supposed to have done.

Preliminary Issue – Named Respondent

The application lists respondent TK.

SH affirmed that TK is a building manager representing landlord AI Stober Construction Ltd. The tenancy agreement indicates the landlord is AI Stober Construction Ltd.

SH stated that LMP Management Ltd. is a property management company authorized to represent landlord AI Stober Construction Ltd. SH, AB and TK are agents for LMP Management Ltd.

Based on SH's convincing testimony and the tenancy agreement, I find the landlord is AI Stober Construction Ltd.

Pursuant to section 64(3)(a) of the Act, I have amended the tenant's application to list respondent landlord AI Stober Construction Ltd.

### Issues to be Decided

Is the tenant entitled to cancellation of the notice?

If the tenant's application is dismissed, is the landlord entitled to an order of possession?

### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claim and my findings are set out below. I explained rule 7.4 to the attending party; it is the landlord's obligation to present the evidence to substantiate the Notice.

SH testified that the tenancy started on October 01, 2019. Monthly rent currently is \$1,446.00, due on the first day of the month. The landlord collected and currently holds in trust a security deposit in the amount of \$712.50.

TK attached the Notice to the tenant's front door on July 18, 2022.

The tenant submitted this application on July 27, 2022 and continues to occupy the rental unit.

SH submitted the July 18, 2022 Notice into evidence. The effective date is August 31, 2022. The reasons to end the tenancy are:

- Tenant is repeatedly late paying rent.

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The details of the events are:

Continuously late paying rent. Late in the following months: February 2022, April 2022, May 2022, and July 2022. Continuous late letter, warning of breach of material term issued on April 13, 2022.

SH said that he served a warning letter on May 11, 2021 informing the tenant that the landlord will serve a notice to end tenancy if the tenant pays rent late.

SH affirmed that after the May 11, 2021 letter the tenant paid rent late on February 14, April 6, July 7, August 9 and September 12, 2022 and that the tenant has not paid rent since September 12, 2022.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

I accept TK's uncontested convincing testimony that the notice was attached to the rental unit's front door on July 18, 2022. The tenant is deemed served the Notice on July 21, 2022, per section 90(c) of the Act.

I find that the tenant's application was submitted before the ten-day deadline to dispute the Notice, in accordance with section 47(4) of the Act, as the tenant is deemed to have received the Notice on July 21, 2022 and submitted the application on July 27, 2022.

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

(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;

Residential Tenancy Branch Policy Guideline 38 states:

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.

(emphasis added)

Based on SH’s uncontested testimony, I find that monthly rent is due on the first day of the month, the landlord served a warning letter to the tenant on May 11, 2021 indicating the landlord may serve a notice to end tenancy if the tenant pays rent late and the tenant paid rent late on February 14, April 6 and July 7, 2022.

I therefore find the landlord is entitled to end this tenancy, pursuant to section 47(1)(b) of the Act. I dismiss the tenant’s application without leave to reapply.

I find the form and content of the Notice is valid pursuant to section 52 of the Act, as the Notice is signed and dated by the landlord, gives the address of the rental unit, states the effective date of the Notice, states the grounds for ending the tenancy and it is in the approved form.

I find that pursuant to section 55(1)(b) of the Act, the landlord is entitled to an order of possession effective two days after service on the tenant.

I warn the tenant that he may be liable for any costs the landlord incurs to enforce the order of possession.

### Conclusion

I dismiss the tenant’s application to cancel the Notice without leave to reapply.

I grant an order of possession to the landlord effective two days after service. The landlord is provided with this order in the above terms and must serve it on the tenant in

accordance with the Act. If the tenant fails 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: December 16, 2022

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Residential Tenancy Branch