



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

OPC, CNC

### **Introduction**

This hearing dealt with cross applications.

On August 10, 2022 the Tenants filed an Application for Dispute Resolution, in which the Tenants applied to set aside a One Month Notice to End Tenancy for Cause.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Cause. The Landlord has named the first individual named on the Tenants' Application for Dispute Resolution as the only Respondent in the Landlord's Application for Dispute Resolution. This individual will be referred to as the Tenant in this decision. As the Tenant is the only Respondent named in the Landlord's Application for Dispute Resolution, the Tenant will be the only person named in any Order granted to the Landlord on the basis of her Application for Dispute Resolution.

The Landlord stated that on August 31, 2022 the Landlord's Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch in August of 2022 was sent to the Tenant, via registered mail. The Tenant acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

The Tenant stated that on September 01, 2022 the Tenants' Dispute Resolution Package was sent to the Landlord, via registered mail, although it was returned to her by Canada Post. The Tenant cited a Canada Post tracking number that corroborates this testimony. The Landlord stated that she did not receive notice of this registered

mail and she was not aware the Tenants had filed this Application for Dispute Resolution.

As the issues in dispute in the Landlord's Application for Dispute Resolution are identical to the issues in dispute in the Tenants' Application for Dispute Resolution, I find it reasonable to consider the Tenants' Application for Dispute Resolution even though it was not received by the Landlord.

On September 13, 2022 the Tenants filed an Amendment to their Application for Dispute Resolution, in which they added an application to cancel a second One Month Notice to End Tenancy for Cause. This second One Month Notice to End Tenancy for Cause was issued for the same reasons as the first One Month Notice to End Tenancy for Cause.

The Tenant stated that on September 13, 2022 the Amendment to the Application for Dispute Resolution was sent to the Landlord, via registered mail, although it was returned to her by Canada Post. The Tenant cited a Canada Post tracking number that corroborates this testimony. The Landlord stated that she did not receive notice of this registered mail and she was not aware the Tenants had amended their Application for Dispute Resolution.

As the reasons cited for ending the tenancy in the second One Month Notice to End Tenancy for Cause are identical to the reasons cited in the first One Month Notice to End Tenancy for Cause, I find it reasonable to consider the Tenants' application to cancel the second Notice to End Tenancy, even though the Amendment was not received by the Landlord.

On September 16, 2022 the Landlord submitted additional evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenant, via registered mail, on September 15, 2022. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On December 13, 2022 the Landlord submitted additional evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenant, via registered mail, on September 15, 2022. The Tenant denied receipt of this evidence.

As the evidence submitted on December 13, 2022 includes an email sent on October 28, 2022, I find it highly unlikely that this document could have been served to the

Tenant on September 15, 2022. I therefore find that the Landlord has failed to establish that this evidence was served to the Tenant and it was not accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

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 be set aside or should the Landlord be granted an Order of Possession?

#### Background and Evidence

The Landlord and the Tenant agreed that this tenancy began on February 01, 2018 and that during the latter part of the tenancy rent of \$2,030.00 was due by the first day of each month.

The Landlord stated that on August 06, 2022 a One Month Notice to End Tenancy for Cause was posted on the door of the rental unit, which declared that the unit must be vacated by September 30, 2022. The Tenant stated that this One Month Notice to End Tenancy for Cause was located on her door on August 05, 2022.

The One Month Notice to End Tenancy for Cause that was posted on the door of the rental unit in August of 2022 declares that the tenancy is ending because the rent is repeatedly late and the tenant or a person permitted on the property has caused extraordinary damage to the unit/site.

The Landlord stated that on August 31, 2022 a second One Month Notice to End Tenancy for Cause was sent to the Tenant via registered mail. This Notice declared

that the unit must be vacated by September 30, 2022. The Tenant stated that this One Month Notice to End Tenancy for Cause was received in the mail, although she is not certain when it was received.

The One Month Notice to End Tenancy for Cause that was mailed to the Tenant in August of 2022 also declares that the tenancy is ending because the rent is repeatedly late and the tenant or a person permitted on the property has caused extraordinary damage to the unit/site.

The Landlord and the Tenant agree that rent was not paid when it was due July 01, 2022; June 01, 2022; May 01, 2022; and March 01, 2022.

The Landlord stated that the Tenant caused extraordinary damage to the rental unit when the Tenant cut down two trees on the property, as depicted in the photograph submitted by the Landlord.

The Tenant stated that those two trees were partially removed by the Tenant after the tops of the trees were blown over in a windstorm in the winter of 2021.

The Tenant stated that on January 05, 2023 the Landlord sent her a text message declaring that her rent had increased to \$2,070.00, effective January 01, 2023. The Tenant stated that she interpreted this to mean that her tenancy would continue.

The Landlord stated that rent was increased in January of 2023 because she was entitled to increase the rent on January 01, 2023 and the Tenant will still living in the unit.

The Landlord stated that whenever the Tenant paid her rent after September 30, 2022, she informed the Tenant that the tenancy would end in spite of the rent being paid. The Tenant stated that the Landlord did not communicate with her after September 30, 2022 until January 05, 2023 when the Landlord told her the rent would increase.

### Analysis

On the basis of the undisputed evidence, I find that two One Month Notices to End Tenancy for Cause were served to the Tenant. Both One Month Notices to End Tenancy for Cause declared that the rental unit must be vacated by September 30, 2022 and both declared that the tenancy is ending because the rent is repeatedly late and the tenant or a person permitted on the property has caused extraordinary damage to the unit/site.

As the Tenant declared that she received the first One Month Notice to End Tenancy for Cause on August 05, 2022, I find that she until August 15, 2022 to file an Application for Dispute Resolution to dispute the Notice. As the Tenant applied to cancel this One Month Notice to End Tenancy for Cause on August 10, 2022, I find that the Tenant filed the application to dispute the Notice in accordance with timelines established section 47(4) of the *Act*.

On the basis of the undisputed evidence that the second One Month Notice to End Tenancy for Cause was mailed on August 31, 2022, I find that it was deemed received by the Tenant on September 05, 2022, pursuant to section 90 of the *Act*. I therefore find that the Tenant had until September 15, 2022 to file an Application for Dispute Resolution to dispute the second Notice. As the Tenant amended her Application for Dispute Resolution to include an application to cancel this second Notice on September 13, 2022, I find that the Tenant applied to dispute the second Notice in accordance with timelines established section 47(4) of the *Act*.

Section 47(1)(b) of the *Act* permits a landlord to end a tenancy if the tenant is repeatedly late paying rent. Section 47(1)(f) of the *Act* permits a landlord to end a tenancy if the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to the rental unit or residential property. I find that by serving the two aforementioned One Month Notices to End Tenancy for Cause, the Landlord properly notified the Tenant of the Landlord's intent to end the tenancy pursuant to sections 47(1)(b) and 47(1)(f) of the *Act*. The Landlord bears the burden of proving there are grounds to end this tenancy pursuant to these sections.

Residential Tenancy Branch Policy Guideline #39, with which I concur, suggests that three late rent payments are the minimum number sufficient to end the tenancy in accordance with section 47(1)(b) of the *Act*. As the parties agree that the Tenant was

late paying her rent on four occasions in 2022, I find that the Landlord has established grounds to end this tenancy pursuant to section 47(1)(b) of the *Act*.

As I have concluded that the Landlord has establish the right to end the tenancy pursuant to section 47(1)(b) of the *Act*, I find that I do not need to determine if the Landlord also has the right to end the tenancy pursuant to section 47(1)(f) of the *Act*.

A notice to end tenancy can be waived or withdrawn only with the express or implied consent of the party who gave the notice.

Express waiver happens when a landlord and tenant explicitly agree to waive a right or claim. With express waiver, the intent of the parties is clear and unequivocal. For example, the landlord and tenant agree in writing that the notice to end tenancy is waived and the tenancy will be continued.

As explained in Residential Tenancy Branch Policy Guideline 11, implied waiver happens when a landlord and tenant agree to continue a tenancy, but without a clear and unequivocal expression of intent. Instead, the waiver is implied through the actions or behaviour of the landlord or tenant. For example, if a landlord gives a notice to end tenancy, a landlord may accept rent from the tenant for the period up to the effective date of the notice to end tenancy without waiving the notice. However, if the landlord continues accepting rent for the period after the effective date of the notice to end tenancy but fails to issue rent receipts indicating the rent is for “use and occupancy only,” it could be implied that the landlord and tenant intend for the tenancy to continue.

In these circumstances, I find that the Landlord continued to accept rent after the effective date of the One Month Notices to End Tenancy for Cause. I find that the Landlord has submitted no evidence to corroborate her testimony that she told the Tenant that the tenancy would not continue even though rent was being accepted while the Tenant lived in the unit or to refute the Tenant’s testimony that this information was not provided to her.

Accepting rent without informing the tenant that it is being accepted on a “use and occupancy only” basis is not the sole determinant of whether a landlord has implied that a notice to end tenancy will be waived and that the landlord is willing to continue the tenancy. The issue of implied waiver must be considered in conjunction with the landlord’s actions, as outlined in Residential Tenancy Branch Policy Guideline 11. This

includes whether the landlord has withdrawn their application for dispute resolution to enforce the notice to end tenancy or has cancelled the dispute resolution hearing and the general conduct of the landlord.

In these circumstances, the Landlord did not withdraw her Application for Dispute Resolution in which she applied for an Order of Possession. Rather, the Landlord served the Tenant with a second One Month Notice to End Tenancy for Cause the day after she filed her Application for Dispute Resolution and she served the Tenant with additional evidence to support her Application for Dispute Resolution on September 15, 2022. On the basis of these actions, I find it was not reasonable for the Tenant to conclude that the Landlord was waiving or withdrawing either of the One Month Notices to End Tenancy for Cause.

Although I accept that the Landlord sent the Tenant a text message on January 05, 2023 in which she informed the Tenant that her rent had increased to \$2,070.00, I cannot conclude that was an implied waiver of the notices to end tenancy.

I find it more likely that the Landlord was acting out of frustration rising from the Tenant continuing to occupy a rental unit for several months after the declared effective date of a notice to end tenancy. I note that a text message is not the proper method of increasing the rent and I therefore this text message is more indicative of unsophisticated landlord than an offer to continue the tenancy.

As the Landlord has established grounds to end this tenancy pursuant to section 47(1)(b) of the *Act* and I am not convinced that the Landlord waived or withdrew either One Month Notice to End Tenancy for Cause, I dismiss the Tenant's application to set aside either of the One Month Notices to End Tenancy for Cause and I grant the Landlord an Order of Possession.

### Conclusion

I dismiss Tenant's application to set aside either of the One Month Notices to End Tenancy for Cause.

I grant the Landlord an Order of Possession **that is effective on January 31, 2023**. 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 *Residential Tenancy Act*.

Dated: January 10, 2023

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Residential Tenancy Branch