



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PACIFICA HOUSING  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, CNC

### Introduction

This hearing convened to deal with the tenants' application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenant applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) and an order cancelling the One Month Notice to End Tenancy for Cause (Notice/1 Month Notice) issued by the landlord.

The tenants and the landlord's agents attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me. The tenants confirmed receipt of the landlord's evidence and the landlord confirmed receipt of the tenants' application. The tenants did not file additional evidence.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

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

Issue(s) to be Decided

Are the tenants entitled to cancellation of the 1 Month Notice and the 10 Day Notice?

Background and Evidence

The tenancy began on September 1, 2021 and the current monthly rent is \$1,565 due on the first day of the month.

In the landlord's written statement, the landlord provided their position in this matter, as follows in brief part:

**END OF TENANCY TYPE:** 1 month Notice to End Tenancy for Cause

**PROOF OF SERVICE:** Posted to door on Aug 2, 2022 at 10:45am

**SUMMARY:**

The tenancy began September 1, 2021.

- Since the beginning of this tenancy, to this date, rent has only been paid on time 6 (six) times.
- In the last 12 months, rent has been late 7 (seven) times.
- Tenants have received 5 (five) 10 day Notices to End Tenancy and 2 (two) 1 month Notices to End Tenancy

**Conclusion**

It is the position of Pacifica Housing that the Applicants have been given more than fair warning that they are in breach of their tenancy agreement, and have been given ample time and chances to correct this. The Respondent didn't act on the first 1 month Notice to End Tenancy that was issued to the Applicants because they promised to pay their rent on time going forward and set up a Pre-Authorized form to allow the Respondent to start withdrawing their rent automatically each month starting for August 2022. The rent payment NSF'd that month and another 1 month Notice to End Tenancy was issued. As such, the Respondent believes they have acted fairly and are obligated to end the Tenancy of these Applicants.

The Respondent requests that they be granted an Order of Possession by the Arbitrator.

[Reproduced as written]

The landlord testified in support of the Notice, issued pursuant to section 47(1)(b) of the Act. The Notice filed in evidence was dated August 2, 2022, listing an effective end of tenancy date of September 30, 2022. The tenants confirmed in their application receiving the 1 Month Notice on that date.

The cause listed on the Notice alleged the tenants are repeatedly late paying rent.

The landlord submitted on the Notice and confirmed at the hearing that the tenants paid their rent late multiple times in 2022, more specifically, January 13, 2022, February 8, 2022, March 7, 2022, May 9, 2022, and June 8, 2022.

The landlord submitted they gave the tenants constant reminders about the late payments. Filed in evidence were the reminder letters, a tenant ledger sheet, and various 10 Day Notices issued to the tenants.

*Tenants' relevant response-*

The tenant agreed the payments were late, but there have been difficulties almost from the beginning of the tenancy, with a job loss, time spent in prison, and difficulties with their son. The tenant said that they now have a method in place to ensure timely rent payments and they will 100% pay any future rent on time.

The landlord confirmed that there is no current outstanding monthly rent. The landlords confirmed also that any order of possession of the rental unit could be effective on February 28, 2023.

Analysis

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

Upon review of the 1 Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of section 52 of the Act and I find that it was served upon the tenants in a manner that complies with section 89(1) of the Act.

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.

After considering the undisputed evidence about the 5 late payments of rent between January 2022 through June 2022, I find that the landlord has provided sufficient evidence to prove the cause listed on the Notice.

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, without leave to reapply, as I find the Notice is valid, supported by the evidence, and therefore, enforceable.

Under Section 55(1)(b) of the Act, if a tenant's application to cancel a Notice has been dismissed, I must grant the landlord an order of possession.

As the landlord agreed that the tenancy could be extended to February 28, 2023, I find the landlord is entitled to and I grant an order of possession of the rental unit (Order) effective on February 28, 2023, at 1:00 pm.

If the tenants fail to vacate the rental unit pursuant to the terms of the Order after being served with it, 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 fees** are recoverable from the tenants.

The tenants are reminded that the monthly rent is still due and payable through the end of the tenancy.

As I have upheld the 1 Month Notice and granted the landlord an order of possession, I find it was not necessary to consider the tenants' request to cancel the 10 Day Notice. As the tenancy is ending by way of the 1 Month Notice, I dismiss the tenants' application seeking cancellation of the 10 Day Notice, without leave to reapply.

I note that the tenants received the 1 Month Notice on August 2, 2022 and had until August 12, 2022 to file their application for dispute resolution. However, the tenants waited until August 31, 2022, to do so. Although the tenants were out of time to file their application, I did not consider that they were conclusively presumed to have accepted the tenancy ended on the effective date of the 1 Month Notice, as I instead considered the merits of the landlord's 1 Month Notice, as noted herein.

### Conclusion

For the reasons stated above, the tenants' application seeking cancellation of the 1 Month Notice and 10 Day Notice is dismissed, without leave to reapply.

The landlord has been issued an order of possession for the rental unit, effective on February 28, 2023, at 1:00 pm.

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: January 20, 2023

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Residential Tenancy Branch