



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding REALSTAR MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes:**

OLC, FFT

### **Introduction:**

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenants in which the Tenants applied for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* and/or the tenancy agreement and to recover the fee for filing this Application for Dispute Resolution.

The Advocate for the Tenant stated that on October 06, 2022 the Dispute Resolution Package and documents submitted to the Residential Tenancy Branch on September 30, 2022 and October 03, 2022 was sent to the Landlord, via registered mail. The Agent for the Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On October 27, 2022 and January 15, 2023, the Tenants submitted evidence to the Residential Tenancy Branch. The Advocate for the Tenant stated that this evidence was not served to the Landlord. As this evidence was not served to the Landlord, it was not accepted as evidence for these proceedings.

On January 30, 2023 the Landlord evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was personally served to the male Tenant on January 30, 2023. The Advocate for the Tenant stated that the Tenants received this evidence and have had sufficient time to consider it. As such, this evidence was 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.

Preliminary Matter #1:

The Tenants submitted a copy of a One Month Notice to End Tenancy for Cause to the Residential Tenancy Branch on September 30, 2022. The Advocate for the Tenants stated that by doing so, the Tenants believed they had amended the Application for Dispute Resolution to include a claim to dispute the One Month Notice to End Tenancy for Cause.

The Agent for the Landlord stated that he understood the Tenants had disputed the One Month Notice to End Tenancy for Cause and that the Landlord is prepared to respond to that matter at these proceedings.

Although this Application for Dispute Resolution was not amended to include an application to cancel the One Month Notice to End Tenancy for Cause prior to the hearing, in accordance with the Residential Tenancy Branch Rules of Procedure, I find it reasonable to amend the Application for Dispute Resolution at the hearing, as both parties understood that matter would be determined at these proceedings.

Preliminary Matter #2:

At the hearing the parties were advised that I was unable to open the video evidence submitted by the Landlord on January 30, 2023. The Advocate for the Tenant advised that the Tenants had been able to open that evidence.

The Agent for the Landlord stated that the video evidence would be submitted to the Residential Tenancy Branch again.

The video was discussed at the hearing and the parties were advised that I would view the video once it had been re-submitted to the Residential Tenancy Branch.

The Landlord submitted the video the Residential Tenancy Branch again on February 06, 2023 but I was still unable to view that video.

On February 07, 2023 a Residential Tenancy Branch Information Officer contacted the Agent for the Landlord and advised that I was unable to open the second copy of the video that had been submitted to the Residential Tenancy Branch.

On February 07, 2023 the Landlord submitted two video files, labelled "Gym\_theft" and "Social\_room" to the Residential Tenancy Branch. I was unable to view those videos.

I have contacted the Government "Help Desk" and confirmed that my inability to open the video is not related to my computer.

I issued an Interim Decision on February 09, 2023 in which the Landlord was given another opportunity to submit this video evidence. The Landlord was advised that the video must be submitted to the Residential Tenancy Branch no later than February 23, 2023 and that the onus was on the Landlord to ensure the video evidence is submitted in a format I am able to open.

The aforementioned video evidence was again submitted to the Residential Tenancy Branch on February 17, 2023. I have been able to view that evidence and it was considered during this adjudication.

Issue(s) to be Decided:

Is there a need to issue an Order requiring the Landlord to comply with the *Act*?  
Should the One Month Notice to End Tenancy for Cause be set aside?

Background and Evidence:

The Landlord and the Tenants agree that the tenancy began on March 01, 2021 and that the tenancy agreement declares that rent is due by the first day of each month.

The Advocate for the Tenants stated that there is a policy that permits tenants to pay the rent a few days after it is due. The Agent for the Landlord stated that there is no such policy.

The Landlord and the Tenants agree that a One Month Notice to End Tenancy for Cause was personally served to the male Tenant on September 30, 2022, which

declared that the rental unit must be vacated by October 31, 2022. They agree that the reasons for ending the tenancy cited on the Notice to End Tenancy are:

- The tenant is repeatedly late paying rent;
- The tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk;
- The tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to, affect the quiet enjoyment, security, safety, or physical well-being or another occupant; and
- The tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to, jeopardize a lawful interest of another occupant or the landlord.

The Agent for the Landlord said that rent for May of 2022 was paid, in full, on May 29, 2022. The Advocate for the Tenants said that rent for May of 2022 was paid, in full, on May 02, 2022.

The Agent for the Landlord said that rent for January of 2022 was paid, in full, on January 29, 2022. The Advocate for the Tenants said that rent for January of 2022 was paid, in full, on January 01, 2022.

The Agent for the Landlord said that rent for December of 2021 was paid, in full, on December 31, 2021. The Advocate for the Tenants said that rent for December of 2021 was paid, in full, on November 30, 2021.

The Agent for the Landlord said that rent for November of 2021 was paid, in full, on November 30, 2021. The Advocate for the Tenants said that rent for November of 2021 was paid, in full, on November 09, 2021.

The Agent for the Landlord said that rent for October of 2021 was paid, in full, on October 24, 2021. The Advocate for the Tenants said that rent for October of 2021 was paid, in full, on October 09, 2021.

The Landlord and the Tenants agree that on September 18, 2022 the occupant with the initials "DN" and two friends were in the gym of the residential complex, at which time "DN" picked up keys belonging to another occupant of the residential complex. The parties agree that the owner of the keys subsequently asked "DN" if he had seen his keys and "DN" informed him that he had not. The parties agree that "DN" the following morning "DN" returned those keys to the office.

The Agent for the Landlord stated that he has viewed surveillance video and determined that:

- “DN” picked up the other occupant’s keys from a bench in the gym; and
- “DN” is seen with the keys in an adjacent common room.

The Area Manager stated that she has viewed the surveillance video and she thinks it demonstrates that “DN” intended to take the keys.

The Advocate for the Tenant stated that he has viewed the surveillance video and he does not think it demonstrates that “DN” intended to take the keys.

“DN” stated that:

- When he was in the gym with his friends, he accidentally picked up the keys belonging to another occupant of the residential complex;
- He thought he had picked up his keys when he picked up the keys belonging to the other occupant;
- Although he has seen the video that shows he dropped the keys in the adjacent common room, he does not recall doing that;
- When the other occupant asked him if he had seen his keys, he did not realize that he had accidentally picked them up;
- When he was undressing for bed around 1:00 or 1:30 a.m., he found the keys in his pant’s pocket;
- He returned the keys to the office when he awoke the next morning; and
- He did not use the keys.

In response to a question asked by the Agent for the Landlord, “DN” state that he does not recall if the other occupant’s keys had a car fob on it and that his keys do not have a car fob on it.

The Witness for the Tenants stated that:

- He was with “DN” in the gym on September 18, 2022;
- He was with “DN” when “DN” located the keys in his pocket; and
- “DN” appeared surprised to have found the keys.

The Advocate for the Tenant submits that the keys were picked up accidentally and there was no criminal intent. He further submits that if “DN” had stolen the keys, he would not have remained in the common area after picking them up.

The Agent for the Landlord stated that he does not believe the keys were used by “DN”.

The Application for Dispute Resolution indicates that the Tenant is seeking an Order requiring the Landlord to comply with the *Act* and/or tenancy agreement because the Tenant feels that Landlord is attempting to “bully” the Tenants into signing a mutual agreement to end the tenancy.

Analysis:

On the basis of the tenancy agreement which declares rent is due by the first day of each month, I find that rent is due by the first day of each month.

As the Agent for the Landlord denies that there is a policy that permits tenants to pay the rent a few days after it is due and the Tenants submitted no evidence to support their submission that there is such a policy, I cannot conclude that there was an agreement that rent could be paid after the first day of each month.

On the basis of the undisputed evidence, I find that on September 30, 2022 the Landlord served the Tenant with a One Month Notice to End Tenancy for Cause which declared that the tenancy was ending pursuant to sections 47(1)(b), 47(1)(d)(iii), 47(1)(e)(ii), and 47(1)(e)(iii) of the *Act*. The Landlord bears the burden of proving there are grounds to end the tenancy on the basis of at least one of those sections.

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

Residential Tenancy Branch Policy Guideline #8, with which I concur, reads, in part:

*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.*

On the basis of the undisputed evidence, I find that rent was not paid when it was due on May 01, 2022, October 01, 2021, and November 01, 2021.

I find that the Landlord has submitted insufficient evidence to establish that rent was not paid when it was due on December 01, 2021 or January 01, 2021. In reaching this conclusion I was heavily influenced by the absence of any documentary evidence, such as a rent ledger or bank records, that corroborates the Landlord's submission that rent was not paid on time for those months or that refutes the Tenants' submission that it was not paid on time for those months.

I accept that the Tenants have paid the rent late on three occasions, which is the minimum number of times Residential Tenancy Branch Policy Guidelines suggest are needed to end a tenancy pursuant to section 47(1)(b) of the *Act*. I find, however, that the Tenants paid rent, on time, on several occasions between May 01, 2022, which was the last time rent was paid late, and September 30, 2022, which is when this One Month Notice to End Tenancy for Cause was served. By waiting several months before serving the One Month Notice to End Tenancy for Cause, I find that the Landlord waived their right to end this tenancy pursuant to section 47(1)(b) of the *Act*. I therefore find that the Landlord has failed to establish grounds to end this tenancy pursuant to section 47(1)(b) of the *Act*.

I note that this decision does not grant the Tenants authority to pay rent late in the future. In the event the Tenants pay rent late on even one occasion in the future, the Landlord may have the right to end this tenancy pursuant to section 47(1)(b) of the *Act*, providing they serve notice to end the tenancy in a timely manner.

On the basis of the undisputed evidence, I find that on September 18, 2022 "DN" picked up keys belonging to another occupant of the residential complex, which were returned the following day.

I find that "DN"s testimony that the keys were picked up accidentally was forthright and credible. I find his testimony was corroborated by the testimony of an individual who was with him when the keys were taken and subsequently located by "DN". I have viewed the Landlord's video evidence and I do not concur with the Area Manager's opinion that shows the keys were taken intentionally. In my view, there is nothing in the video that shows "DN" was acting maliciously or intentionally when he picked up the keys.

As the Landlord has failed to establish that the "DN" intentionally took keys belonging to another occupant of the residential complex or that he used those keys for a malicious

purpose, I find that the Landlord has not established grounds to end this tenancy pursuant to sections 47(1)(d)(iii), 47(1)(e)(ii), and 47(1)(e)(iii) of the *Act*.

I find that the Landlord has failed to establish grounds to end this tenancy and I grant the application to cancel the One Month Notice to End Tenancy for Cause.

Although I cannot conclude there is a need to issue an Order requiring the Landlord to comply with the *Act* and/or tenancy agreement, the parties are hereby advised that the parties should only sign a mutual agreement to end the tenancy if both parties wish to end the tenancy.

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to recover the fee paid to file this Application.

Conclusion:

The One Month Notice to End Tenancy for Cause is set aside and has no force or effect. This tenancy shall continue until it is ended in accordance with the *Act*.

The Tenants have established of \$100.00 as compensation for the cost of filing this Application for Dispute Resolution and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

In the event the Tenants do not wish to enforce this monetary Order through the Province of British Columbia Small Claims Court, the Tenant has the right to withhold \$100.00 from one monthly rent payment, in full compensation of this monetary claim.

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: February 20, 2023

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Residential Tenancy Branch