



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This hearing convened to deal with the tenant's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenant applied for an order cancelling the One Month Notice to End Tenancy for Cause (Notice/1 Month Notice) issued by the landlord, and recovery of the cost of the filing fee.

The tenant and the landlord 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 landlord confirmed receiving the tenant's evidence and application.

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.

### Preliminary and Procedural Matters-

The landlord filed documentary evidence with the RTB and filed evidence showing they served the tenant the same package by registered mail, which was unclaimed. The tenant said they did not get a notice about registered mail.

A review of the Canada Post online tracking information shows a notice card, then a final notice were left for the recipient to claim the item. However, the item went unclaimed and was returned to sender.

I find the landlord submitted sufficient evidence to show they served the tenant their evidence. Refusal of delivery is not sufficient to override the deemed service provisions of the Act. I therefore reviewed and considered the landlord's evidence.

#### Issue(s) to be Decided

Should the Notice be cancelled or enforced?

Is the tenant entitled to recovery of the cost of the filing fee?

#### Background and Evidence

This written tenancy agreement shows that this tenancy began on November 1, 2004, monthly rent began at \$475, due on the first day of each month, and the tenant paid a security deposit of \$232.50. The current monthly rent according to the tenant is \$683.

The landlord testified in support of the Notice. The Notice submitted into evidence by both parties shows that it was dated December 10, 2023, listing an effective end of tenancy date of January 31, 2023. The landlord submitted without dispute that the Notice was served to the tenant by attaching it to the tenant's door on December 28, 2022.

The cause listed on the Notice alleged the tenant is repeatedly late paying rent.

The landlord filed documentary evidence summarizing the tenant's rent payments since October 2019, taken from the attached bank records, according to the landlord. The records indicate that since that time, the tenant has paid rent late 33 times, including every month in 2022.

The landlord submitted that they have had many discussions with the tenant about prioritizing their rent payments, which did not result in an improvement. The landlord submitted that they have served the tenant multiple 10 Day Notices for unpaid rent.

*Tenant's relevant response-*

In their application, the tenant wrote the following:

*I was wrongfully laid off in January 2022 from 40 hrs per week to 24 hrs. My union has grieved this and arbitration is expected in April 2023. I suffer from mental illness and other health issues. This year my landlord has tried to evict me 3 times for late rent. My landlord is trying to evict me before my settlement comes in as I currently pay only \$675.99 per month and he is renting other units for \$1500. He signed December 12 but delivered it to me Dec 28*

The tenant said he agreed that rent is being paid late but that he should not be held accountable due to the situation with their job. The tenant submitted they have had extreme hardship this past year, and has had to take advantage of the food banks, and rely on friends and family to pay the rent.

Analysis

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

Upon review of the 1 Month Notice, 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 tenant in a manner that complies with section 88 of the Act.

Although the landlord listed an incorrect date they signed the Notice, December 10, 2023, rather than December 10, 2022, I find this was a clerical error, and did not impact the validity of the Notice, as the tenant filed their application to dispute the Notice on the date of receipt of the Notice.

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

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 submitted for this hearing, where the tenant agreed they paid the monthly rent late due to employment issues and the landlord's accounting reflecting 33 late payments since October 2019, I find that the landlord has provided sufficient evidence to prove the cause listed on the Notice.

While the tenant claimed employment and hardship issues caused the late payments, I do not find that excused the tenant from their legal obligation to pay monthly rent in full by the first day of the month.

Given the above, I find the landlord has submitted sufficient evidence to prove on a balance of probabilities that the tenant is repeatedly late paying rent.

I therefore **dismiss** the tenant's 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.

Given that the tenant has resided in the rental unit since November 1, 2004, I find it reasonable to extend the effective date of the order of possession to May 15, 2023. I grant and issue to the landlord an order of possession effective at 1:00 pm on May 15, 2023.

If the tenant fails 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 tenant is cautioned that costs of such enforcement such as **bailiff fees** are recoverable from the tenant.

I dismiss the tenant's request for recovery of the filing fee.

Conclusion

For the reasons stated above, the tenant's application seeking cancellation of the Notice is dismissed, without leave to reapply.

The landlord has been issued an order of possession for the rental unit, effective May 15, 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: May 01, 2023

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Residential Tenancy Branch