



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNC, LRE, FFT

### Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (the “Act”) for:

- cancellation of the landlord’s One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47;
- an order to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70(1); and,
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

OH and PH, the landlords, appeared at the hearing. IH appeared as a witness for the landlords.

OH testified that they received a copy of the Notice of Dispute Resolution Proceeding from the tenant, but they did not receive the tenant’s evidence.

OH testified that the landlords served the tenant with their evidence to the tenant’s pre-agreed email on May 26, 2023.

The parties were given full opportunity under oath to be heard, to present evidence and to make submissions. The parties were cautioned that recording of the hearing is prohibited pursuant to Rule of Procedure 6.11.

### Preliminary Matters

At the outset of the hearing OH indicated that their last name is spelled incorrectly on the tenant's application. OH also noted that PH is not included as a landlord. Pursuant to section 64(a) of the Act, I have amended the tenant's application to indicate the correct spelling of OH's last name and include PH as a landlord.

Rules of Procedure 7.3 and 7.4 discuss the consequences of a party not attending a hearing.

#### **7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

#### **7.4 Evidence must be presented**

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

In accordance with the above, the hearing proceeded in the tenant's absence. I order the tenant's applications are dismissed without leave to reapply.

### Issue(s) to be Decided

Are the landlords entitled to an Order of Possession?

### Background and Evidence

While I have considered the documentary evidence and the testimony OH, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the landlords' evidence and testimony and my findings are set out below.

OH testified that the parties entered into a written tenancy agreement on September 15, 2022. Rent is \$1,200.00 payable on the first day of the month. The landlords collected a security deposit in the amount of \$600.00 which they continue to hold in trust for the tenant.

OH testified that they served the tenant with the One Month Notice on February 8, 2023 to the tenant's pre-agreed email address. Included in the landlords' evidence is a copy of the email that was sent to the tenant on February 8, 2023, enclosing the One Month Notice. The tenant responded to the email on February 9, 2023.

The One Month Notice is submitted into evidence and indicates that it was issued because the tenant has been repeatedly late paying rent.

OH testified that the landlords issued the One Month Notice because the tenant was late paying rent for three consecutive months, December 2022, January 2023 and February 2023. OH provided documentary evidence to support that December's rent was paid in two separate payments on December 1, 2022 and December 13, 2022. January's rent was paid in two separate payments on January 6, 2023, and February's rent was paid in two separate payments on February 5, 2023.

OH testified that on December 3, 2022, the tenant was notified by email that bi-weekly payments would not work and that rent is due on the first of each month. OH testified that the tenant has been late paying rent since the One Month Notice was issued; however, the landlords have not submitted documentary evidence to support this. OH testified that there are no rent payments outstanding at this time.

### Analysis

The landlords' affirmed testimony and documentary evidence establishes that the landlords sent the tenant the One Month Notice by email on February 8, 2023, and the tenant responded to the email on February 9, 2023. Further, it is evident to me that upon receipt of the One Month Notice, the tenant filed an application for dispute resolution to cancel the One Month Notice on February 11, 2023. Based on the foregoing, I find pursuant to section 71(2) of the Act that the tenant was sufficiently served with the One Month Notice on February 9, 2023.

Pursuant to Rule of Procedure 6.6, the landlords have the onus of proof to establish, on a balance of probabilities, that the notice issued to end tenancy is valid. This means that the landlords must prove, more likely than not, that the facts stated on the notice to end tenancy are correct and sufficient cause to end the tenancy.

Section 47(1)(b) of the Act states a landlord may end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent. Residential Tenancy Policy

Guideline 38 - Repeated Late Payment of Rent states that three late payments are the minimum number sufficient to justify a notice to end tenancy.

OH provided affirmed testimony and documentary evidence to support that the tenant repeatedly paid rent late for the months of December 2022 and January and February 2023. I accept this undisputed testimony and find the tenant has been repeatedly late paying rent.

The One Month Notice is included in the evidence. I find the One Month Notice meets the form and content requirements of section 52 of the Act. Considering the above, I find that the landlords are entitled to an Order of Possession pursuant to section 55(1)(b) of the Act, which will be effective upon two days after service on the tenant.

### Conclusion

The landlords are granted an order of possession which will be effective two days after service on the tenant.

The order of possession must be served on the tenant. The order of possession may be filed in 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: June 06, 2023

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Residential Tenancy Branch