



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## DECISION

Dispute Codes      CNC

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for cause.

The tenant and the landlord attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

At the commencement of the hearing, the landlord submitted that the landlord's evidentiary material was provided to the tenant by registered mail on February 23, 2024 and has provided proof of such service. The landlord also submitted that no evidence has been received from the tenant, which was not disputed by the tenant. Any evidence that a party wishes to rely on must be provided to the other party, even if they already have a copy, because it is important for all parties to know what is before me. Since the tenant has not served the landlord with the tenant's evidence, I decline to consider it. All evidence of the landlord has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

Has the landlord established that the One Month Notice to End Tenancy For Cause was issued in accordance with the *Residential Tenancy Act*, or should it be cancelled?

### Background and Evidence

**The landlord** testified that this fixed-term tenancy began on March 1, 2021 and reverted to a month-to-month tenancy after March 1, 2022 and the tenant still resides in the rental unit. Rent in the amount of \$2,000.00 was payable on the 1<sup>st</sup> day of each month, which was increased by 2% to \$2,040.00 per month effective in July, 2023, however a copy of a Notice of Rent Increase has not been provided for this hearing.

There are currently no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$1,000.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a condominium apartment, and a copy of the tenancy agreement has been provided for this hearing.

The landlord further testified that on December 11, 2023 the landlord served the tenant with a One Month Notice to End Tenancy For Cause by attaching it to the door of the rental unit. It was issued for repeated late rent, however a copy has not been provided for this hearing. The tenant was late with rent on numerous occasions, and a list of late payments has been provided for this hearing. There was no warning from the tenant that rent would be late, but text messages that rent was coming, but was not followed through with.

**The tenant** testified that tardy rent was beyond the tenant's control and was days late, not months behind. The tenant's employer paid the tenant on the 2<sup>nd</sup> or 3<sup>rd</sup> days of each month, and the bank wants to hold paycheques for 5 days, which is also out of the tenant's control. The tenant now has everything in control to ensure that rent is paid on time; the tenant changed jobs and now gets paid at the end of each month.

The landlord has collected an additional \$25.00 per day for late rent, so well over \$2,100.00 in some months.

### Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the law. The law also states that where I dismiss a tenant's application to cancel a notice to end a tenancy, I must grant an order of possession in favour of the landlord, so long as the notice given is in the approved form. The landlord has not provided a copy of any notice to end the tenancy, and therefore, I cannot be satisfied that it was in the approved form.

I have also reviewed the tenancy agreement and Addendum. The Addendum contains a clause that states: "2. ARREARS: Late payments, returned and non-sufficient cheques (NSF) are subject to a minimum service charge of \$25.00 for each day over the monthly rent due date (1<sup>st</sup> of the month). All future payments would then be made by money order or certified cheque." That term is not legal. The regulations to the *Residential Tenancy Act* states:

### **Non-refundable fees charged by landlord**

**7** (1) A landlord may charge any of the following non-refundable fees:

- (a) direct cost of replacing keys or other access devices;
- (b) direct cost of additional keys or other access devices requested by the tenant;
- (c) a service fee charged by a financial institution to the landlord for the return of a tenant's cheque;
- (d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;
- (e) subject to subsection (2), a fee that does not exceed the greater of \$15 and 3% of the monthly rent for the tenant moving between rental units within the residential property, if the tenant requested the move;
- (f) a move-in or move-out fee charged by a strata corporation to the landlord;
- (g) a fee for services or facilities requested by the tenant, if those services or facilities are not required to be provided under the tenancy agreement.

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

Under paragraph 7 (1) (d), a landlord may charge \$25.00 for a late fee, not per day, and only if the tenancy agreement provides for that fee. I find that the tenancy agreement provides for a \$25.00 fee for each month that rent is paid late.

In this case, the landlord has charged the non-refundable fee in some cases per day, which is not lawful, and I find that the landlord has collected more money from the tenant than permitted. It is not clear how much of an overpayment the landlord has collected, but it gives rise to a question of whether or not the tenant can be considered repeatedly late.

Since the landlord has not provided a copy of the notice to end the tenancy, I cannot be satisfied that any notice given was in the approved form. For that reason, and for the overpayment(s) charged by the landlord, I cancel the Notice and the tenancy continues until it has ended in accordance with the law.

Since the tenant has been successful with the application the tenant is also entitled to recover the \$100.00 filing fee from the landlord. I grant a monetary order in favour of

the tenant as against the landlord in that amount. The order must be served on the landlord, and I order that the tenant be permitted to reduce rent for a future month by that amount, or may file the order in the Provincial Court of British Columbia, Small Claims division for enforcement as an order of that Court.

### Conclusion

For the reasons set out above, the One Month Notice to End Tenancy For Cause served on December 11, 2023 is hereby cancelled and the tenancy continues until it has ended in accordance with the law.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the tenant be permitted to reduce rent for a future month by that amount, or may otherwise recover it.

This order is final and binding and may be enforced.

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: March 08, 2024

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Residential Tenancy Branch