



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNC, OLC, CNOP, FFT

### **Introduction**

This hearing dealt with the Tenants' May 13, 2024, and June 5, 2024 Applications for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- cancellation of the Landlord's May 7, 2024, One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act
- cancellation of the Landlord's June 4, 2024, One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

Tenant T.R. and Tenant S.M. attended the hearing for the Tenants.

Landlord M.K. attended the hearing for the Landlord.

### **Service of Notice of Dispute Resolution Proceeding (Proceeding Package)**

I find that Landlord M.K. was served notices on May 17, 2024, and June 7, 2024, by preagreed email in accordance with section 89(1) of the Act.

### **Service of Evidence**

Based on the submissions before me, I find that the Tenants' evidence was served to the Landlord in accordance with section 88 of the Act.

Based on the submissions before me, I find that the Landlord's evidence was served to the Tenants in accordance with section 88 of the Act.

## **Preliminary Matters – Severing & Adjudication of Notices**

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply. Rule of Procedure 6.2 allows an arbitrator to decline to hear or dismiss unrelated issues. At the commencement of the hearing, I determined that the issue of whether to uphold or cancel the Landlord's notice to end tenancy was the primary issue before me and that the other issue listed on the Tenants' application was not related and would be dismissed with or without leave to reapply.

The parties were advised at the end of the hearing that if the notice issued May 7, 2024, was upheld, the notice issued June 4, 2024, would not be adjudicated.

## **Issues to be Decided**

Should the Landlord's May 7, 2024, One Month Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?

Should the Landlord's June 4, 2024, One Month Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?

Are the Tenants entitled to recover the filing fee for this application from the Landlord?

## **Background and Evidence**

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

Evidence was provided showing that this one-year fixed term tenancy began on July 20, 2023, with a monthly rent of \$3,500.00, due on the twentieth day of the month, with a security deposit in the amount of \$1,750.00 and a pet damage deposit in the amount of \$1,750.00.

According to the Landlord, he issued the Tenants a One Month Notice on May 7, 2024, by preagreed email because the Tenants were repeatedly late on their rent. He stated that the Tenants had paid their rent late for the months of February, March and April 2024 and had been late an additional eight times in the past. Copies of e-transfers for the months identified on the notice were submitted as evidence. The Landlord further

testified that he had told the Tenants many times over the telephone that the late payments were a significant problem and had in fact issued a 10 Day Notice on February 21, 2024 because of the late payment. He argued that the Tenants should have been well aware that he considered late payments unacceptable and that it was their responsibility to ensure that he had the payment in hand on the day it was due.

According to the Tenants, the Landlord did issue them a 10 Day Notice on February 21, 2024, which they paid that day, but never warned them about an issue with the rent being late. They testified that their March 2024 rent was slightly late due to a delay at their banking end and that April 2024 was a little late as well.

## Analysis

### Should the Landlord's May 7, 2024, One Month Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?

Section 47 of the Act states that a landlord may issue a Notice to End Tenancy for Cause to a tenant if the landlord has grounds to do so. Section 47 of the Act states that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the One Month Notice.

As the Tenants disputed this notice on May 13, 2024, and since I have found that the One Month Notice was served to the Tenants by preagreed email on May 7, 2024, I find that the Tenants have applied to dispute the One Month Notice within the time frame allowed by section 47 of the Act. I find that the Landlord has the burden to prove that they have sufficient grounds to issue the One Month Notice.

Section 26(1) of the Act clearly sets out the rules about payment and non-payment of rent. 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. 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 Branch Policy Guideline PG-38 indicates **three late payments** are the minimum number of times sufficient to justify a notice under section 47.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find the Landlord has proven that they have sufficient cause to issue the One Month Notice to the Tenant and obtain an end to this tenancy.

I find, based on the evidence submitted and on the testimony of both parties, that the Tenants were late paying their rent on three occasions for rent owed for February,

March and April 2024. I find that while the Landlord did not issue a written warning that continued late payments would result in the termination of the tenancy, both parties acknowledged that the Landlord issued a 10 Day Notice the day after the February 2024 was due and not received and therefore the Tenants should have known that the Landlord was prepared to end the tenancy due to late payments but continued to be late for the next two months of rental payments nonetheless, the Tenants' contention that no warnings, verbal or otherwise had been given notwithstanding.

The Landlord has shown, on a balance of probabilities, that the tenancy should be ended for the reasons identified on the Notice, specifically that the Tenants were repeatedly late paying rent and therefore I uphold the Landlord's Notice to End Tenancy for Cause.

The Tenants' application for cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act is dismissed without leave to reapply accordingly

Section 55 states If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that the Landlord's One Month Notice complies with the form and content requirements of section 52 as it is signed and dated by the Landlord, provides the address of the rental unit, the effective date of the notice, and the grounds for the tenancy to end; therefore, I find the Landlord is entitled to an Order of Possession pursuant to section 55. As the effective date of the notice has passed, I issue an Order of Possession effective July 31, 2024.

As I have upheld the notice issued May 7, 2024, the second notice issued June 4, 2024, is now mute and therefore I make no findings on its merits. The Tenants' June 5, 2024, application is dismissed in its entirety without leave to reapply.

**Are the Tenants entitled to an order requiring the Landlord to comply with the Act, regulation or tenancy agreement?**

This issue was not heard. As the tenancy is ending, this issue is no longer relevant.

For the above reason, the Tenants' application for an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act is dismissed, without leave to reapply.

**Are the Tenants entitled to recover the filing fee for this application from the Landlord?**

As the Tenants were not successful in their application, I find that the Tenants are not entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

**Conclusion**

I grant an Order of Possession to the Landlord **effective by 1:00 PM on July 31, 2024, after service of this Order on the Tenants**. Should the Tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The Tenants' application for cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act is dismissed, without leave to reapply.

The Tenants' application for an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act is dismissed, without leave to reapply.

The Tenants' application to recover the \$100.00 filing fee paid for this application under section 72 of the Act is dismissed without leave to reapply.

The Tenants' June 5, 2024, application is dismissed in its entirety without leave to reapply.

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: July 10, 2024

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Residential Tenancy Branch