



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Raamco International Properties and  
[tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      CNC-MT, OLC, RP

### **Introduction**

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 66;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 33.

BO ("landlord") represented the landlord in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord's agent confirmed receipt of the tenants' dispute resolution application ('Application'). In accordance with sections 88 of the *Act*, I find that the landlord was duly served with the tenants' application. As both parties acknowledged receipt of each other's evidence, I find that both parties were duly served with each other's evidence in accordance with section 88 of the *Act*.

Although the tenants' original application references a 10 Day Notice to End Tenancy for Unpaid Rent, both parties confirmed in the hearing that this application pertains to a 1 Month Notice to End Tenancy for Cause, and not a 10 Day Notice for Unpaid Rent. Accordingly, I will consider the tenants' application under section 47 of the *Act* to cancel a 1 Month Notice to End Tenancy.

As the tenants confirmed receipt of the 1 Month Notice dated October 2, 2020, which was posted on their door on the same date, I find that this document was deemed served to the tenants, 3 days after posting, in accordance with sections 88 and 90 of the *Act*.

The tenants applied for more time under section 66 to file their application to dispute the 1 Month Notice dated October 2, 2020. As the 1 Month Notice is deemed to have been served on October 5, 2020, and as the tenants filed their application on October 15, 2020, I find that the tenants filed their application within the time limits required by the *Act*. Accordingly, the tenants' application for more time under section 66 of the *Act* is not necessary, and therefore cancelled.

### **Issues to be Decided**

Should the landlord's 1 Month Notice be cancelled?  
If not, is the landlord entitled to an Order of Possession?

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

Are the tenants entitled to an order requiring the landlord to make repairs to the rental unit?

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below

A copy of the tenancy agreement was submitted for this hearing for a fixed-term tenancy for a period from April 1, 2020 through to March 31, 2021. The landlord testified that the tenants were given permission to move in early with rent pro-rated for the period before April 1, 2020. Monthly rent is currently set at \$1,300.00, payable on the first of the month. The landlord collected a security deposit in the amount of \$650.00, which they still hold.

The landlord issued the 1 Month Notice on the following grounds:

1. The tenants or a person permitted on the property by the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord;
2. The tenant is repeatedly late paying rent.

The landlord submitted a ledger detailing the rent payments made during this tenancy, and the landlord testified that the tenants have repeatedly failed to make rent payments on time during this tenancy. The landlord testified that they served the tenants with a repayment plan on August 31, 2020 by way of email and by way of posting the document on the tenants' door. The tenants dispute having received this repayment plan until they were served with the 1 Month Notice. The tenants paid the September 2020 rent on September 8, 2020 after the landlord had served the tenants with a 10 Day Notice for Unpaid Rent. The landlord testified that the tenants have not paid any rent for the months of October 2020 through to January 2021, which the tenants do not dispute.

The landlord also submitted several written complaints received by them from other tenants in the building. The landlord testified that they are also seeking the end of this tenancy due to the numerous noise and disturbance complaints from other tenants. The tenants dispute the claims stating that these complaints arise out of disputes between the tenants, and are retaliatory in nature. The tenants also filed an application for the landlord to comply with the Act. The tenants submit that they feel harassed by other tenants in the building, and that the landlord has ignored their complaints. The tenants filed an application for repairs as they still have issues with a leak in their shower. The landlord testified that he was unaware of these issues, and that the tenants are required to make a formal request for repairs, which would result in copies of work orders, which were not submitted for this hearing.

### **Analysis**

Section 47 of the *Act* provides 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. The tenants filed their application on October 15, 2020 after the 1 Month Notice was deemed served on October 5, 2020. As the tenants filed their application within the required period, and having issued a notice to end this tenancy, the landlord has the burden of proving they have cause to end the tenancy on the grounds provided on the 1 Month Notice.

As set out in Residential Tenancy Policy Guideline #52 COVID-19: Repayment Plans and Related Measures, the referenced late payments of rent fall under the "affected rent" period of March 18, 2020 to August 17, 2020. As per the Policy Guideline and

associated tenancy regulation, “a landlord must give a tenant a repayment plan if the tenant has unpaid affected rent, unless a prior agreement has been entered into and has not been cancelled. If the parties are no longer in a landlord-tenant relationship because the tenancy has ended, a repayment plan would not be required.”

Residential Tenancy Policy Guideline #52 also sets out how a Repayment plan must be served on the tenant:

***Giving the Repayment Plan***

*A repayment plan must be given to a landlord or tenant in one of the following ways:*

- *by leaving a copy with the person;*
- *if the person is a landlord, by leaving a copy with an agent of the landlord;*
- *by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- *if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;*
- *as ordered by an arbitrator on application.*

Although the landlord served the tenants with a repayment plan, I do not find that the landlord did so in a manner set out in the Policy Guideline as noted above.

The Policy Guideline states the following about the issuance of a 1 Month Notice if a repayment plan is not properly served on the tenants:

***D. NOTICES TO END TENANCY FOR CAUSE***

*The C19 Tenancy Regulation provides that a landlord must not give a tenant a One Month Notice to End Tenancy for Cause under section 47 of the RTA or section 40 of the MHTPA in respect of a reason that relates to affected rent being unpaid, including one or more of the following reasons:*

- *One or more payments of the affected rent are late. For example, if the tenancy agreement stipulates that rent is due on the first of each month, and the tenant paid their rent late for the months of April, May, June and July 2020, the landlord cannot end the tenancy for late payment of rent during those months.*
- *A landlord can, however, give a notice to end tenancy for cause if the tenant is repeatedly late in making installment payments under a repayment plan or prior agreement.*

- *The tenant has jeopardized a lawful right or interest of the landlord and the lawful right or interest of the landlord is the right or interest to receive the affected rent.*
- *The tenant put the landlord's property at significant risk by not paying the affected rent.*
- *The tenant breached a material term of the tenancy agreement and the material term is the payment of the affected rent.*
- *The tenant has not complied with an order of the director, and that order is a monetary order for the affected rent.*

*A One Month Notice to End Tenancy that is given for one of these reasons or otherwise is related to affected rent being unpaid is of no effect. An Order of Possession will not be granted to a landlord in these circumstances.*

As I find the late rent payments for the period of April 2020 through to August 2020 fall within the period of affected rent, I order that the landlord provide the tenants with a repayment plan as required by the Act. As I am not satisfied that the landlord had properly served the tenants with a repayment plan for the months of April 2020 through to August 2020, an Order of Possession cannot be granted for late payments that fall within this period, as noted in the Policy Guideline.

For further details about repayment plan requirements please refer to the following links, or contact the Residential Tenancy Branch:

<https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/covid-19>

<https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/forms/rtb14.pdf>

<https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/policy-guidelines/gl52.pdf>

<https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/temporary/covidreg3-579-2020.pdf>

The landlord testified that the tenants were also late in paying their monthly rent for the period after the affected period, and were late paying the September 2020 rent, and have not paid any rent for the months thereafter. The tenants did not dispute this.

RTB Policy Guideline #38 provides the following guidance regarding the circumstances whereby a landlord may end a tenancy where the tenant is repeatedly late paying rent.

*Three late payments are the minimum number sufficient to justify a notice under these provisions...*

*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...*

As noted above, for the purpose of considering an Order of Possession pursuant to this 1 Month Notice, I must exclude the months of April 2020 through to August 2020 in the calculation of late rent payments for the purpose of considering the 1 Month Notice. I have noted the undisputed testimony of landlord that the tenants paid their September 2020 rent late, and have not paid any rent for the month of October 2020 through to January 2021.

RTB Policy Guideline #38 sets out that 3 late rent payments to be the minimum number of late rent payments to justify the notice under the provisions of the *Act*.

In consideration of my above findings and definitions of late rent under the *Act* and *Regulation*, I find that at the time the 1 Month Notice was issued on October 2, 2020, the tenants had made only 2 late rent payments, for September and October 2020, which does not qualify the landlord to seek an Order of Possession on the grounds of the 1 Month Notice dated October 2, 2020. Although it is undisputed that rent was late or unpaid for the months of September 2020 through to January 2021, the 1 Month Notice to End Tenancy for Cause must be valid at the time the Notice was issued to the tenants, which in this case is on October 2, 2020. At the time the 1 Month Notice was issued, the tenants had only made 2 late rent payments, which do not meet the test as set out in RTB Policy Guideline #38.

I find that the landlord did not have grounds to issue the 1 Month Notice on the basis of repeatedly late rent payments at the time the 1 Month Notice was served.

The landlord is also seeking the end of this tenancy on the grounds that the tenants have significantly interfered with, or unreasonably disturbed other tenants. The tenants dispute that the allegations of noise, smoking, and disturbances from their rental unit. In light of the disputed and conflicting testimony and evidence before me, and the fact that

this a multi-tenanted complex, I am not satisfied that the landlord has met the burden of proof to support that these disturbances had originated from the tenants. On this basis, I find that the landlord has not satisfied me that this tenancy should end on these grounds.

I allow the tenants' application to cancel the 1 Month Notice dated October 2, 2020, and this tenancy is to continue until ended in accordance with the *Act*.

The tenants also made an application requesting repairs.

Section 32(1) and (2) of the *Act* outlines the following obligations of the landlord to repair and maintain a rental property:

**32** (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*

*(a) complies with the health, safety and housing standards required by law, and*

*(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.*

Although the tenant references outstanding repairs, I am not satisfied that the tenants had provided sufficient evidence to support that they had informed the landlord in writing of these issues. I have considered the testimony of both parties, and I am not satisfied that the tenants have provided sufficient evidence to support that the landlord has failed to fulfill their obligations as required by section 32 of the *Act* as stated above. I, therefore, dismiss this portion of the tenants' application with leave to reapply.

## **Conclusion**

The tenants' application to cancel the 1 Month Notice is allowed. The 1 Month Notice, dated October 2, 2020, is of no continuing force or effect. This tenancy continues until ended in accordance with the *Act*.

I order that the landlord provide the tenants with a repayment plan in a manner as required by the *Act and Regulation*.

I dismiss the remainder of the tenants' application with 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: January 8, 2021

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Residential Tenancy Branch