



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OLC, CNC, FFT, DRI, PSF

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on October 25, 2020 (the “Application”). The Tenants applied as follows:

- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement;
- To dispute a One Month Notice to End Tenancy for Cause (the “Notice”);
- To dispute a rent increase that is above the amount allowed by law;
- For an order that the Landlord provide services or facilities required by the tenancy agreement or law; and
- To recover the filing fee.

Some of the above claims were filed through amendments to the Application.

This matter came before me January 15, 2021 and had to be adjourned. An Interim Decision was issued January 15, 2021. This decision should be read with the Interim Decision.

The Tenants, Landlord and Co-landlord (the “Landlords”) appeared at the hearing.

The Tenants advised that the dispute of a rent increase was dealt with on File Number 1. Given this, I have not dealt with this issue and it is dismissed without leave to re-apply.

Pursuant to rule 2.3 of the Rules of Procedure (the “Rules”), I told the parties I would hear the dispute of the Notice and dismiss the remaining requests as they are not sufficiently related to the dispute of the Notice. I have decided the dispute of the Notice and request to recover the filing fee. The requests for an order that the Landlord

comply with the Act, regulation and/or the tenancy agreement and an order that the Landlord provide services or facilities required by the tenancy agreement or law are dismissed with leave to re-apply. This decision does not extend any time limits set out in the *Residential Tenancy Act* (the “Act”).

The parties advised of File Number 2 and another hearing in March which is the Landlord’s Application for Dispute Resolution. I did not bring File Number 2 forward to hear it with this file given it includes additional claims by the Landlord which are not raised in the Application. However, it appears the Landlord is seeking an Order of Possession based on the Notice in File Number 2. The validity of the Notice will be determined in this decision. The parties must appear at the March 25, 2021 hearing.

I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Landlords confirmed receipt of the hearing package in October. The Landlords testified that they received the Tenants’ evidence January 04, 2021 and sought exclusion of this evidence given the timing of service.

The Tenants testified that their evidence was sent to the Landlords by registered mail on December 26, 2020 and provided Tracking Number 1. I looked Tracking Number 1 up on the Canada Post website which shows the package was accepted at the post office December 26, 2020, processed January 03, 2020 and delivered January 04, 2020.

The Tenants testified that they did not deliberately delay serving their evidence and provided reasons for the delay such as experiencing stress, having kids, not having enough time on their computer which is also used by their kids and health issues which made it difficult to sit for long periods of time.

Rule 3.14 of the Rules states:

Except for evidence related to an expedited hearing...documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent...not less than 14 days before the hearing.

In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the arbitrator will apply Rule 3.17.

I was satisfied the Landlords received the Tenants' evidence January 04, 2020 as the Canada Post website confirms this. I acknowledge that the evidence was sent in accordance with section 88(c) of the *Act*. I also acknowledge that the evidence was sent December 26, 2020 as the Canada Post website confirms this. Pursuant to section 90(a) of the *Act*, the Landlords would usually have been deemed to have received the evidence December 31, 2020, five days after mailing. However, as stated in Policy Guideline 12 at page 12:

The Supreme Court of British Columbia has determined that the deeming presumptions can be rebutted if fairness requires that that be done. For example, the Supreme Court found in *Hughes v. Pavlovic*, 2011 BCSC 990 that the deeming provisions ought not to apply in that case because Canada Post was on strike, therefore unable to deliver Registered Mail.

I was satisfied the deeming provision was rebutted here given the Canada Post website information which shows Canada Post did not attempt to deliver the evidence prior to January 04, 2021. This is not a situation where Canada Post attempted to deliver the evidence and the Landlords were not available or failed to pick the package up. The Landlords could not have received the package prior to January 04, 2020, which is the first date Canada Post attempted to deliver the package. It would be unfair to the Landlords to deem them to have received a package earlier than the first date Canada Post attempted to deliver the package. It is not the fault of the Landlords that Canada Post did not deliver the package until January 04, 2020. Further, the Landlords had no ability to receive the package earlier.

Given the Landlords received the evidence January 04, 2021, the evidence was not served in accordance with rule 3.14 of the Rules, which required the evidence to be received no later than December 31, 2020. I found the Tenants failed to comply with rule 3.14 of the Rules.

I considered rule 3.17 of the Rules which states:

### 3.17 Consideration of new and relevant evidence

Evidence not provided to the other party...in accordance with the Act or Rules...3.14...may or may not be considered depending on whether the party can

show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence.

The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.

I heard the parties on whether the evidence should be admitted or excluded. The Landlords submitted it should be excluded as it is 300 pages and they did not have time to review it. The Tenants made submissions about Canada Post and an incident which occurred December 22, 2020. The Tenants did not make it clear how an incident on December 22, 2020 impacted service of the evidence.

I excluded the Tenants' evidence pursuant to rule 3.17 of the Rules for the following reasons.

The Tenants disputed the Notice in October and had two months to compile their evidence and serve it on the Landlords in time. I find two months sufficient to have compiled evidence relating to the dispute of the Notice. The Tenants chose to make additional claims in the Application and submitted hundreds of documents for the Application. I find that how the Tenants chose to make the Application and what evidence the Tenants chose to submit impacted the time it took to compile the evidence because much of the evidence relates to issues other than the Notice.

Further, the Tenants sent the Landlords the evidence on the last day they were permitted to send it to comply with the Rules if the deeming provisions had applied. I was not satisfied the reasons provided for this were sufficient. I acknowledge that it is not the Tenants' fault that Canada Post waited until January 04, 2021 to deliver the package. However, this was the risk the Tenants took by waiting until the last possible day to send their evidence to the Landlords.

The Tenants submitted a large volume of evidence and I was satisfied the Landlords did not have sufficient time to review it prior to the hearing. I found it would be unfair to the Landlords to consider evidence they did not have time to review when the Tenants had not complied with the Rules in relation to the timing of service.

The Tenants' evidence was excluded and I have not considered it.

The Tenants confirmed receipt of the Landlords' evidence December 21, 2020. The Landlords confirmed all evidence submitted was served on the Tenants. The Landlords' evidence was served in accordance with the Rules and is admissible.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the Landlords' documentary evidence and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

### Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, should the Landlord be issued an Order of Possession?
3. Are the Tenants entitled to reimbursement for the filing fee?

### Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started May 01, 2017 and was for a fixed term ending April 30, 2018. It then became a month-to-month tenancy.

The Notice was submitted as evidence. It is dated October 21, 2020. The grounds for the Notice are:

1. Tenant is repeatedly late paying rent;
2. Tenant or a person permitted on the property by the tenant has...
  - a. Seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
  - b. Put the landlord's property at significant risk.
3. Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit...or property...
4. Tenant has not done required repairs of damage to the unit...property...

The Details of Cause raise the following issues:

- A fire in the rental unit October 02, 2019
- A fire in the rental unit June 29, 2019
- Damage to the washroom
- Walls vandalized with permanent markers and spot painted with a different color of paint

There was no issue that the Tenants received the Notice October 25, 2020.

The parties testified as follows in relation to the grounds for the Notice.

***Repeated late payment of rent***

The Landlords testified that the Tenants paid rent late 16 times in 2018, 2019 and 2020.

The Tenants testified as follows. They paid rent late three times in 2019, the last time being October 04, 2019. They did not pay rent late more than this from September of 2018 to December of 2020. The Landlord agreed verbally to the late payments. The Landlords never issued the Tenants a 10 Day Notice.

The Landlord denied having agreed to the Tenants paying rent late. The Landlords agreed they never issued the Tenants a written 10 Day Notice.

The Landlords testified that they submitted bank records showing the late payments. I do not have such bank records. Nor did the Tenants receive such bank records.

***A fire in the rental unit October 02, 2019***

The Landlords testified as follows. The Tenants caused a fire in the rental unit October 02, 2019. Photos in evidence show the resulting damage.

The Tenants testified as follows. There was a fire in the rental unit October 02, 2019. It was an accident. Tenant K.K. left a pot of oil on a burner. Tenant K.K. had turned the burner off. There was an issue with the dial on the stove that controls the burner which must have turned to "max" rather than "off". The light indicator on the stove did not work so Tenant K.K. did not know the burner was on. The smoke detector did not work at the time which added to the issue. The Tenants fixed the damage caused by the fire.

The Landlords took issue with the appliances used to replace the damaged appliances, denied that the smoke alarm was not working and denied that the stove dials and lights were not working.

I asked the Landlords why the Notice was issued a year after this incident. The Landlords testified that they were trying to give the Tenants a chance. I asked the Landlords what the Tenants had done since to trigger the Notice. The Landlords said the Tenants have broken their trust and referred to File Number 1 and the rent increase issue. The Landlords took issue with the Tenants disputing a rent increase through the RTB. The Landlords also said that the pandemic impacted the timing of the Notice.

### ***A fire in the rental unit June 29, 2019***

The Landlords testified as follows. The Landlords smelled burning and saw smoke from the rental unit June 29, 2019. They heard the smoke alarm go off in the rental unit and commotion from the rental unit. The Tenants would not let the Landlords into the rental unit and the Landlords did not see what had happened. The Landlords later saw a burnt pot under the deck.

The Tenants denied there was a fire in the rental unit June 29, 2019.

### ***Damage to the washroom***

The Landlords testified as follows. The Tenants have caused extreme damage to the rental unit as shown in the photos. The damage includes burn marks on the kitchen counter, a leak in the kitchen sink due to neglect, damage to the washroom vanity, damage to the walls by the toilet, taking out shelving in the bedroom closet, ripped carpets, removal of the toilet tank without permission, water damage, moisture damage, mold, cupboard doors are ripped, walls are filthy and the rental unit smells.

The Tenants testified as follows. The Tenants keep the rental unit clean. The photos in evidence do not support the Landlords' position about the state of the rental unit. Any damage to the rental unit is normal wear and tear. There is damage happening to the cabinet which is particle board and from 2004. The heaters in the rental unit do not work and the heater provided does not sufficiently heat the rental unit which has resulted in more moisture. The only repair done to the rental unit without permission was to the toilet which would not flush and was leaking. The Tenants had asked the Landlords to repair the toilet, but the Landlords just told the Tenants to put sealant on it.

***Walls vandalized with permanent markers and spot painted with a different color of paint***

The Landlords testified as follows. Walls in every bedroom have been vandalized and sections have been painted a different color without the Landlords knowing. The painting is not acceptable.

The Tenants testified as follows. There is unfinished painting in the rental unit due to the Tenants' kids writing on the walls. The writing was not in permanent marker, it was in washable marker that can easily be erased with a wet towel.

The Tenants submitted that the Notice was issued in retaliation for the Tenants not agreeing to a rent increase.

Analysis

The Notice was issued pursuant to section 47 of the *Act* and the following subsections:

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(b) the tenant is repeatedly late paying rent...

(d) the tenant or a person permitted on the residential property by the tenant has...

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

(iii) put the landlord's property at significant risk...

(f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;

(g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) [obligations to repair and maintain], within a reasonable time;



The Tenants had 10 days to dispute the Notice pursuant to section 47(4) of the *Act*. There was no issue that the Tenants received the Notice October 25, 2020. The Application was filed the same day and therefore within time.

The Landlords have the onus to prove the grounds for the Notice pursuant to rule 6.6 of the Rules.

I note the following about File Number 1. The Tenants filed an Application for Dispute Resolution for the following:

- An order directing the Landlords to comply with the Act, regulation or tenancy agreement;
- Disputing a rent increase; and
- Seeking to recover the filing fee.

The Application for Dispute Resolution was filed October 18, 2020. A decision was issued January 11, 2021. In the decision, the parties agreed the Landlords were served with the Application for Dispute Resolution on or around October 25, 2020. The Tenants were successful in their dispute of the rent increase.

I am not satisfied the Landlords had grounds to issue the Notice for the following reasons.

I find the Landlords issued the Notice because the Tenants filed the Application for Dispute Resolution on File Number 1 disputing a rent increase. The Landlords said as much during the hearing. I asked the Landlords why they waited to issue the Notice and the Landlords said they were giving the Tenants a chance. When asked what the Tenants did further to trigger the Notice, the Landlords referred to the Tenants filing the Application for Dispute Resolution on File Number 1 and disputing the rent increase. The Tenants were entitled to enforce their rights under the *Act*. The Landlords are not permitted to punish the Tenants for doing so and are not permitted to end the tenancy because the Tenants did so. I find this is what the Landlords are attempting to do in issuing the Notice and I cancel it on this basis.

I also cancel the Notice for the following reasons.

I am not satisfied the Tenants are repeatedly late paying rent because the parties disagreed about what rent payments were late and the Landlords did not submit documentary evidence to support their position.

I am satisfied there was a fire in the rental unit October 02, 2019. I am not satisfied this fire provided the Landlords with grounds to issue the Notice on October 25, 2020, more than a year later. If the fire was a significant issue for the Landlords, I expect they would have issued the Notice in October of 2019. The Landlords attempted to explain the delay in issuing the Notice by reference to the pandemic. I do not accept that the delay in issuing the Notice can be explained by the pandemic given the Landlords had five and a half months to issue the Notice prior to a state of emergency being declared in British Columbia due to the pandemic. Further, the Landlords were permitted to issue the Notice up until March 30, 2020 and anytime after June 24, 2020. In the circumstances, the pandemic does not explain the delay in issuing the Notice.

I am not satisfied there was a fire in the rental unit June 29, 2019 because the parties disagreed about this and I am not satisfied the Landlords have provided sufficient evidence showing there was a fire.

In relation to the damage to the bathroom and walls, I am not satisfied the damage is serious enough to warrant ending the tenancy. If the Tenants caused the damage, they will be responsible for fixing it prior to vacating the rental unit and the Landlords can seek compensation from the Tenants if they do not do so. Further, I am not satisfied that the nature of the damage is such that the Tenants pose a risk to the rental unit.

Given the above, I am not satisfied the Landlords had grounds to issue the Notice and I cancel the Notice. The tenancy will continue until ended in accordance with the *Act*.

Given the Tenants were successful in the Application, I award them reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2) of the *Act*, the Tenants are permitted to deduct \$100.00 from one future rent payment as reimbursement for the filing fee.

### Conclusion

The Application is granted. The Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

The Tenants are awarded reimbursement for the \$100.00 filing fee. The Tenants are permitted to deduct \$100.00 from one future rent payment as reimbursement for the filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: January 25, 2021

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Residential Tenancy Branch