



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Celebrate Foundation  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **CNC, OLC, RP**

### **Introduction**

This hearing was scheduled for 11:00 a.m. on this date, via teleconference call, to deal with a tenant's application to cancel a One Month Notice to End Tenancy for Cause ("1 Month Notice"); orders for compliance and repair orders.

The tenant did not appear at the hearing despite leaving the teleconference call open 30 minutes to give her the opportunity to appear.

The landlord was represented at the hearing; however, the landlord's agents stated they were not served with the proceeding package by the tenant. Rather, the landlord's agent received an email concerning a dispute resolution proceeding so the landlord called the Residential Tenancy Branch ("the Branch") and was provided a copy of the proceeding package by the Branch. The landlord wanted to proceed to deal with the tenant's request for cancellation of the 1 Month Notice and was willing to be deemed served. I deemed the landlord sufficiently served pursuant to the authority afforded me under section 71 of the Act.

Rule 6.6 of the Rules of Procedure provide that the landlord has the burden to prove a Notice to End Tenancy should be upheld where a tenant has disputed it. Accordingly, I continued to hear from the landlord with a view to determining whether the 1 Month Notice the tenant sought to cancel should be upheld or cancelled.

As for the other remedies sought by the tenant on this Application for Dispute Resolution, I dismissed those, without leave to reapply. Rule 7.3 of the Rules of Procedure provide:

### **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.

On another procedural note, the style of cause was amended to reflect the correct name of the landlord. Also, the second applicant was removed as a named party since he is an occupant of the rental unit but not a tenant under the tenancy agreement.

#### Issue(s) to be Decided

Should the 1 Month Notice be upheld or cancelled; and, is the landlord entitled to an Order of Possession?

#### Background and Evidence

The tenant and the former landlord entered into a tenancy that started on December 15, 2006. The landlord is holding a security deposit of \$335.00. The monthly rent was initially set at \$670.00 payable on the first day of every month and after the most recent rent increase, the tenant's rent obligation is \$729.00 per month.

The landlord issued the subject 1 Month Notice on April 23, 2021 with an effective date of May 31, 2021. The 1 Month Notice indicates two reasons for ending the tenancy:

- Tenant is repeatedly late paying rent; and,
- Tenant, or a person permitted on the property by the tenant, has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The 1 Month Notice was accompanied by a memorandum that provided greater detail of the reasons for ending the tenancy. Below, I have reproduced the relevant portions of the memorandum (with names omitted by me for privacy purposes):

You have breached your lease on several occasions and as such we are including a **"One Month Notice to End Tenancy for Cause"** form.

Occasions:

1. Section 47 (1a) "the tenant is repeatedly late paying rent."
  1. Late rent August 2019; received August 10th, 2019
  2. Late rent September 2019; received October 1st, 2019
  3. Late rent October 2019; received October 30th, 2019
  4. Late rent November 2019; received November 11th, 2019
  5. Late rent December 2019; received December 6th, 2019
    1. Issued "10 Day Notice to End Tenancy"
  6. Late rent January 2020; received January 3rd, 2020
  7. Late rent April 2020; received April 10th, 2020
  8. Late rent August 2020; received August 10th, 2020
  9. Late rent October 2020; received October 6th, 2020
  10. Late rent March 2021, received March 5th, 2021
  11. Late rent April 2021; \$354 remaining; received April 22nd, 2021
    1. Issued "10 Day Notice to End Tenancy" on April 16, 2021
2. Section 47 (1d) "tenant or persons permitted on the property by the tenant has: significantly interfered with or unreasonably disturbed another occupant or the landlord."
  1. Complaint re: loud arguing, smashing of glass and domestic violence concern (November 5th, 2019)
    1. Celebrate Foundation replaced apartment window on November 6th.
  2. Complaint re: domestic violence concern with RCMP called (January 4th, 2020)
  3. Complaints re: smell of cigarette smoke (May 2020-Feb 2021)

With regret I have been instructed by the Board of Directors of \_\_\_\_\_, to communicate to you that you will have one month to vacate your apartment. All of your belongings must be out for an inspection on May 31st, 2021.

The tenant filed to dispute the 1 Month Notice within the time limit for doing so.

At the hearing, the landlord's agent provided testimony consistent with the information contained in the memo above. The tenant did not appear at the hearing to oppose the landlord's evidence.

I informed the landlord that the late payments of April 2020 and August 2020 cannot be considered late due to the Ministerial Orders issued in response to the Covid-19 pandemic. However, I was satisfied the tenant was repeatedly late paying rent at least three times even after excluding the months of April 2020 and August 2020.

The landlord requested an Order of Possession effective seven (7) days after service upon the tenant.

### Analysis

Where a notice to end tenancy comes under dispute, the landlord bears the burden to prove the tenant was served with a valid notice to end tenancy and the tenancy should end for the reason(s) indicated on the notice.

Upon review of the 1 Month Notice, I find it is in the approved form and is duly completed.

Under section 47 of the Act, a landlord may end a tenancy for cause where the tenant is repeatedly late paying rent. Residential Tenancy Policy Guideline 38: *Repeated Late Payment of Rent* provides that to be considered “repeatedly late” there must be three or more late payments.

Upon consideration of the landlord’s unopposed evidence, I find the tenant has been late paying rent at least three times, even after excluding the months of April 2020 and August 2020. Therefore, I uphold the 1 Month Notice.

Having been satisfied the landlord has a basis for ending the tenancy for repeated late payment of rent, I find it unnecessary to give further consideration to the other reason indicated on the 1 Month Notice.

Section 55(1) of the Act provides as follows:

**55** (1) 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.

In this case, I am satisfied that the 1 Month Notice meets the form and content requirements of section 52 of the Act and I have upheld it during the dispute resolution hearing. Accordingly, I find the criteria of section 55(1) have been met and the landlord is entitled to an Order of Possession. Provided to the landlord is an Order of Possession effective seven (7) days after service upon the tenant, as requested by the landlord during the hearing.

Conclusion

The 1 Month Notice dated April 23, 2021 is upheld and the landlord is provided an Order of Possession effective seven (7) days after service of the order upon the tenant.

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 08, 2021

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Residential Tenancy Branch