



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, FFT

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a One Month Notice to End Tenancy for Cause dated March 24, 2021 ("One Month Notice"), and to recover the \$100.00 cost of their Application filing fee.

The Tenants, the Landlord, two agents for the Landlord, A.S., and G.S. ("Agents"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. Two witnesses for the Landlord were also present, although they did not provide any testimony.

During the hearing the Tenants and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

### Preliminary and Procedural Matters

The Tenants provided the Parties' email addresses in the Application, and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only

consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Section 55 of the Act states that if a tenant's application to cancel an eviction notice is unsuccessful and is dismissed, and I am satisfied that the eviction notice complies with the requirements under section 52, I must grant the landlord an order of possession.

The onus to prove their case is on the person making the claim. In most cases, this is the person who applies for dispute resolution. However, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

#### Issue(s) to be Decided

- Should the One Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?
- Is the Tenant entitled to recovery of the \$100.00 Application filing fee?

#### Background and Evidence

The Parties agreed that the periodic tenancy began on November 1, 2014, and that the residential property has three bedrooms and two and a half bathrooms. They said the Tenants started by paying a monthly rent of \$2,000.00, although it has risen to \$2,300.00 over the years. The rent is due on the first day of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of \$1,000.00, and no pet damage deposit. The Agent confirmed that the Landlord still holds the Tenants' security deposit.

The Parties both submitted a copy of the One Month Notice. This was signed and dated March 24, 2021, it has the rental unit address, and it was served in person on March 24, 2021. The One Month Notice has an effective vacancy date of April 30, 2021, and it was served on the grounds that (i) the Tenants are repeatedly late paying rent, and (ii) the Tenants allowed an unreasonable number of occupants in the unit.

#### **#1 LATE PAYING RENT**

The Agent, A.S., said:

So, if you look the appendices pages, I have everything organized. Appendix G is the late rent appendix. I went to my bank to get the interact transfers. For example, for March 2021, I received rent on the 3<sup>rd</sup>. He had said he had given it on the first. Appendix G at page 5 states that deposit was made on 2021-03-03.

The Agent pointed to Appendix I for evidence that the Landlord has autodeposit for her account. The email in Appendix I states explains how autodeposit works, saying:

Autodeposit is a feature within the *interact* e-Transfer® service that allows users to save time when depositing money into their bank account. When you register for Autodeposit, funds are automatically deposited into the account associated with the e-mail address or phone number that you registered, when you are sent money to that e-mail address or phone number. This means you no longer need to answer a security questions to deposit funds sent via *Interact* e-Transfer into your bank account.

The Agent said:

I don't need to accept and deposit; it will automatically go into the bank account.

March was late, January on time, February was also late, and July was also late this year. July was sent on the first, but because it is a holiday, it didn't get deposited until the second.

I do have 2020, as well, and we are aware that during the pandemic there was a time where the rent was allowed to be late. But after that, in September – see Appendix H, which shows the dates of rent payments in 2020. September rent was paid on September 3, October was also late, sent on October 2, November late – sent on November 2. On page seven it shows that December was paid on December 2, 2020.

Prior to the pandemic, March was also late last year - paid on the 4<sup>th</sup>.

In [instant messaging app] messages and text messages on pages 11 – 13, the Landlord is asking on March 3, 2020 when they will drop off the rent. On March 10, the message shows the Landlord asking, 'Can you pay the water bill by the 15<sup>th</sup>,' and he responds, 'Sure I will try.' But it was not paid on time.

The Agent said that on page 12 of Appendix H, the Landlord texted the Tenant on

January 29, 2020, to ask when she can expect the balance of the rent owing for January 2020. She said that it had been paid in portions. The Tenant's answer to this message was: "Really sorry for that. I was busy at work from the last few days and [S.S.] is not feeling well. I will drop 300 tomorrow by my self for sure."

The Agent said:

That was 2020. Rent was late the whole year in 2019. The balance was carried over to the next month. All conversations in Appdx J. He was given a 10 Day Notice in 2018, when [the Landlord] was fed up. He took the notice to [I.T.] the neighbour, asking him to intervene. He said, please give me another chance. The neighbour spoke with [the Landlord]. . . he said moving forward, he would pay the rent on time.

The Tenant, R.S., said:

She's right it happened a few times - the rent was late. It was due to my finance problem. A lot of dollars I owe her. I need to clarify, whenever my rent was late, [the Landlord] [instant messaged] me that I owe the remaining balance of the rent. She said, 'I took it from my credit.' Whenever I paid in two parts, she texted me that the balance, 'I have to take from my line of credit' ... and she charged me interest for that with the complete rent.

The Tenant said: "I acknowledge being late a number of times."

## **#2 UNREASONABLE NUMBER OF OCCUPANTS**

In answer to my question, how many people are currently occupying the rental unit, the Landlord said:

Now I don't know, he said those occupants had moved out when I became aware of it. But at that time there were four additional occupants that were living there, in addition to his family of six. These occupants were not his family members, and not part of the original tenancy agreement, or the new contract – [the Tenant], and his wife and four kids; but these additional occupants are international students he was keeping. I became aware of that through the neighbours.

The first time was in September 2020, when there was work needed to be done

in the home. They went into the unit and that's when they saw [the Tenant] – and

not his children - as the worker had seen his children before. This is not subletting, but they had asked if he were subletting the unit to other people, but they needed permission to do so. The word subletting was understood by both parties to be additional subletters.

One of the girls staying there wrote a testimonial – Appendix C - signed on February 24. She had told me it was her and her sister living upstairs in the master bedroom and a half bathroom. And she said two other girls were living there, too. She was paying \$550.00 and the other were paying \$600.00, that's \$2,300.00 – essentially his rent. He has also been collecting income assistance, but [the Landlord] used to receive the application, asking how much is the rent.

According to me, it's a three-bedroom home, they made the family room into a bedroom - and even the furnace room - which is not allowed by municipal bylaws. I thought the square footage of the home was 2500 square feet, but it's actually 1971 square feet – I did my research. It's unreasonable. The furnace room and the laundry room are together – roughly 10 x 11 feet square. There's a bed and a dresser in there.

The Tenant said:

This is actually a single unit house. There's no privacy – the rooms are all open under one roof. Three bedrooms and a family of six. The girls she told about are living with me; she came in January 2019, and is living with me. I'm taking \$500.00 a month, not \$550.00 a month. They came due to the reference of my friend, because I cannot enter any person without – there's no independent unit to give to somebody else. The two sisters came in January 2019, and they are sharing \$500.00 a month. They tried to move, but nobody can rent out the new place to one person, and they're stuck here to the end of 2020.

In my "proof 1" [submission], there is a message from the Landlord, and she gave me verbal permission. It shows on line seven that I told her, because I was jobless at that time, I said I want to give one room to somebody. My sister moved out of this house and she moved out from this house and then I texted her; it is difficult for me, so can I sub-lease one room. And she said yes you can. I tried to tell her to give me in writing, but she wouldn't.

The message from the Landlord to which the Tenant referred reads as follows:

No I did not give permission for you to sublease the place for the last 6-7 years. 6-7 years ago you asked me for a favor to sublease the place for only 2-3 months because you had no job and your sister had moved out. So I did you a favor. I also asked you who would be staying with you and you never informed me. I did not allow you to sublease for 7 years.

I had to hear from the neighbors that there's students staying there, and that many students have come in and out. I am the owner of that house and this is not a donation place where I can help people. I am the one paying the extra sewer and tax fees and the repairs for wear and tear.

[reproduced as written]

The Agents said:

It was actually more than those two sisters. Yes, they were there from 2019 to 2020. There were two other girls up there – paying \$600.00 each. See the statements signed by the neighbours. Over the years, it has been people coming and going, but I have in Appendix C – the metered utility bill, and it shows how much water you use, and it corresponds with the number of people living there.

The Landlord's Appendix C contains handwritten statements from various people.

The first statement is from {J.T.} and it starts:

My name is [J.T.]. My sister [N.T.] and I were renting the upper bedroom and bathroom at [rental unit address] for \$550.00/month from January 2019 – December 2020. . . .

I was renting the one bedroom and bathroom in the upstairs portion of the house, and [the Landlord] and his family were living in the downstairs portion of the house with their own bathroom. We shared the 1 kitchen in the home. There was also another girls who was renting the master bedroom upstairs (with own washroom inside room). There was a total of four of us living upstairs....

[reproduced as written]

The next statement is from a neighbour of the rental unit, [R.K.], which includes:

I am a neighbour of [the Tenant], who resides in a rental home at [residential

property address]. I am writing to inform that, over the last few years, I have witnessed [the Tenant] having many different people living (sub-leasing) in his rental home, in addition to [the Tenant], his wife, and his 4 children.[The Tenant] has also directly informed me that he has had individuals living in his rental home as tenants that he was subleasing to.

As I am retired and spend most of my time standing outside and observing the neighbourhood, I have seen various people, mostly young adults who looked like international students and individuals on work permits, in and out of his home over the years. There was a specific period of time where I witnessed four young adult females, who looked like international students, living in his home.

Appendix C included two more statements, one from a maintenance worker, and one from a neighbour, both of whom commented on the number of people in the residential property besides the Tenant and his family.

The Tenant encouraged me to determine if this situation amounts to subleasing or not.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

### **#1 LATE PAYING RENT**

Policy Guideline # 38 (“PG #38”), “Repeated Late Payment of Rent”, states:

*The Residential Tenancy Act and the Manufactured Home Park Tenancy Act both provide that 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.

It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments. 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.

A landlord who fails to act in a timely manner after the most recent late rent

payment may be determined by an arbitrator to have waived reliance on this provision.

In exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.

Whether the landlord was inconvenienced or suffered damage as the result of any of the late payments is not a relevant factor in the operation of this provision .  
[emphasis added]

Section 26 of the Act sets out that a tenant must pay rent when it is due:

**Rules about payment and non-payment of rent**

**26** (1) 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 of the Act authorizes a landlord to end a tenancy for repeated late payment of rent:

**Landlord's notice: cause**

**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.

PG #38 explains that, absent any exceptional circumstances (such as a bank error through no fault of the tenant), three instances of late payment of rent are the minimum number of instances of late payments required to support this type of Notice to End Tenancy.

The Tenant did not given any reasons for his late payment of rent, other than one comment about “finance problems”. I find this is an insufficient explanation to be considered an “exceptional circumstance”, as set out in PG #38.

I find that the undisputed evidence before me is that the Tenant was late paying rent

multiple times since 2019, including March 2020, September through December 2020, February 2021, and March 2021. I find pursuant to section 47 (1) (c) of the Act that the Landlord has proven on a balance of probabilities that the Tenant was repeatedly late paying rent, such that the Landlord is eligible for an order of possession of the rental unit. I also find that the One Month Notice is valid as to form and content pursuant to section 52 of the Act. I, therefore, grant the Landlord with an Order of Possession of the rental unit, pursuant to section 55 of the Act.

Given my decision regarding the repeatedly late rent payments, I find it is unnecessary to consider other issues before me. I dismiss the Tenants' Application wholly without leave to reapply. Given that the effective vacancy date has passed, I grant the Landlord an Order of Possession **effective two days after service** of this Order on the Tenants.

### Conclusion

The Tenants are unsuccessful in their Application to cancel the One Month Notice. I dismiss the Tenants' Application wholly, as I find that the One Month Notice is valid and effective as of April 30, 2021.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible.

Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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*.

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Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 21, 2021

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Residential Tenancy Branch