



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47.

The tenant, the landlord and the landlord's advisor attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this decision and order.

The tenant testified that he personally served an agent of the landlord with a copy of this application for dispute resolution and evidence the same date that he received the dispute materials from the Residential Tenancy Branch. The dispute materials were made available to the tenant on July 5, 2021. The landlord testified that she received the above documents the same day or the day after they were served on the landlord's agent. I find that the above documents were served in accordance with section 88 and 89 of the *Act*.

The landlord testified that she served the tenant with her evidence but was unable to provide testimony on when or how it was served. The tenant testified that he received

the landlord's evidence from the landlord on October 2, 2021. I find that the tenant was served with the landlord's evidence in accordance with section 88 of the *Act*.

I note that section 55 of the *Act* requires that when a tenant submits an application for dispute resolution (the "application") seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the application is dismissed or the landlord's notice to end tenancy is upheld and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

### Issues to be Decided

1. Is the tenant entitled to cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47 of the *Act*?
2. If the tenant's application is dismissed or the landlord's Notice to End Tenancy is upheld, and the Notice to End Tenancy complies with the *Act*, is the landlord entitled to an Order of Possession, pursuant to section 55 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on April 1, 2009 and is currently ongoing. Monthly rent in the amount of \$835.00 is payable on the first day of each month. A security deposit of \$342.50 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree that on June 2, 2021 the landlord personally served the tenant with a One Month Notice to End Tenancy for Cause (the "One Month Notice"). A copy of the One Month Notice was uploaded by both parties. The landlord's copy does not state the date the tenant must vacate the subject rental property. The tenant's copy states that the tenant must vacate the subject rental property by July 31, 2021. The tenant testified that the vacancy date was on the copy of the One Month Notice he received from the landlord.

The One Month Notice states the following reason for ending the tenancy:

- Tenant is repeatedly late paying rent.

The landlord testified that the tenant was late paying rent in March, April and May 2021. The tenant agreed with the above testimony. The tenant testified that he was late paying rent for March, April and May 2021 due to a bank error. The tenant entered into evidence a business card for a bank employee. The tenant did not call any witnesses or provide any other evidence regarding the bank error.

### Analysis

Based on the testimony of both parties, I find that the tenant was personally served with the One Month Notice on June 2, 2021, in accordance with section 88 of the *Act*.

Section 47(1)(b) of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent.

Residential Policy Guideline 38 (PG #38) states that 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.

Based on the testimony of both parties, I find that the tenant was late paying rent in March, April and May of 2021. I find that the tenant has not proved, on a balance of probabilities, that a bank error caused the late rent payments as no supporting evidence was provided. I find that a business card alone does not prove a bank mistake. Pursuant to my above findings, section 47(1)(b) of the *Act* and PG #38, I dismiss the tenant's application without leave to reapply.

Upon review of the One Month Notice entered into evidence and received by the tenant, I find that it meets the form and content requirements of the section 52 of the *Act*.

Section 55 of the *Act* states that 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 since the One Month Notice complies with section 52 of the *Act* and the tenant's application to cancel the One Month Notice was dismissed, the landlord is entitled to an Order of Possession effective October 31, 2021.

### Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective at **1:00 p.m. on October 31, 2021**, which should be served on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: October 12, 2021

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Residential Tenancy Branch