



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Introduction**

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

- cancellation of a One Month Notice to End Tenancy For Cause (the "One Month Notice"), pursuant to section 47;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, present evidence and to make submissions. No issues were raised with respect to the service of the application and respective evidence submissions.

The tenant's application was filed within the time period required under the Act.

### **Preliminary Issue – Scope of Application**

*Residential Tenancy Branch Rules of Procedure*, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

Aside from the application to cancel the Notice to End Tenancy, I am exercising my discretion to dismiss the remainder of the issues identified in the tenants' application with leave to reapply as these matters are not related. Leave to reapply is not an extension of any applicable time limit.

## Issues

Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

## Background and Evidence

The tenancy for this apartment unit began October 1, 2018. The current property manager took over on December 1, 2021. The current monthly rent is \$704.00 payable on the 1<sup>st</sup> day of each month.

The landlord served the tenant with the One Month Notice on July 29, 2022 on the grounds that the tenant is repeatedly late paying rent.

The landlord submitted evidence in the form of e-transfer date stamps which indicate the tenants were late paying rent in December 2021, January 2022, February 2022 and May 2022. The landlord testified that even after the One Month Notice was issued, the tenants were again late paying rent for the months of September and October 2022.

The tenant testified that in November 2021 his co-tenant was involved in a motor vehicle accident which created difficulties for her to pay rent. The tenant testified that the previous property manager was made aware that they were struggling to make rent payments on time and was willing to work with them.

## Analysis

Section 47 of the Act contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 47(4) of the Act, a tenant may dispute a One Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the One Month Notice.

In this case, the landlord issued the One Month Notice pursuant to paragraph 47(1)(b) of the Act, which permits a landlord to terminate a tenancy if the tenant has been repeatedly late paying rent. Residential Tenancy Policy Guideline #38 Repeated Late Payment of Rent provides that a minimum of three late payments constitutes cause pursuant to paragraph 47(1)(b) of the Act. In exceptional circumstances, an arbitrator may consider the reason(s) for the late payments.

Pursuant to section 26 of the Act, the tenant has the obligation to pay rent when it is due under the tenancy agreement. The tenancy agreement sets out that rent is due on the first day of each month.

I accept the landlord's testimony and evidence that rent was paid late on at least a minimum of three occasions dating back to December 2021. In this case the tenants rent was paid late on six occasions over the past 12 months prior to the hearing date. The tenant acknowledged the late rent payments. The tenant failed to provide sufficient evidence to support his claim that the difficulties in paying rent on time were the result of a motor vehicle accident or that arrangements had been put in place with the previous property manager for accepting late payments.

I find that the landlord has provided sufficient evidence to justify that it had cause to issue the One Month Notice on the grounds of repeated late payments. The tenant's application to cancel the One Month Notice is dismissed and the landlord is entitled to an Order of Possession pursuant to section 55 of the Act. The tenant has paid rent in full for the month of November 2022; therefore, the Order of Possession will be effective November 30, 2022.

### Conclusion

I grant an Order of Possession to the landlord effective **1:00 p.m. on November 30, 2022**. Should the tenant(s) 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: November 14, 2022

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Residential Tenancy Branch