



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PLAN A REAL ESTATE SERVICES LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **CNC, RR, RP, FFT**

### **Introduction**

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on March 17, 2023 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a One Month Notice to End Tenancy for Cause, dated March 7, 2023 (the "One Month Notice");
- an order granting a rent reduction;
- an order for regular repairs; and
- an order granting the return of the filing fee.

The Tenant P.S., and the Landlord's Agents K.H. and A.M. attended the hearing at the appointed date and time. At the start of the hearing the parties confirmed service and receipt of their respective Application and documentary evidence packages. As there were no issues raised relating to service, I find that these documents were sufficiently served pursuant to Section 71 of the *Act*.

### **Preliminary Matters**

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important issue to determine is whether or not the tenancy is ending based on the One Month Notice.

The Tenants' request for a rent reduction, and a repair order are dismissed with leave to reapply. The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution 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 and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

#### Issue(s) to be Decided

1. Are the Tenants entitled to an order cancelling the One Month Notice, pursuant to Section 47 and 55 of the *Act*?
2. Are the Tenants entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?
3. If the Tenants are unsuccessful in cancelling the One Month Notice, is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?

#### Background and Evidence

The parties testified and agreed to the following; the tenancy began on September 1, 2018. The Tenants are required to pay rent in the amount of \$3,236.60 each month to the Landlord which is due on the first day of each month. The Tenants paid a security deposit in the amount of \$1,525.00, as well as a pet deposit in the amount of \$1,525.00. The Tenants continue to occupy the rental unit.

The Landlord's Agents testified that the Tenants have been repeatedly late paying rent in August 2022, January 2023, and March 2023. The Landlord's Agents stated that they subsequently served the Tenants with the One Month Notice dated March 7, 2023 with an effective vacancy date of April 30, 2023 by Registered Mail on March 8, 2023. The Landlord's reason for ending the tenancy on the One Month Notice is;

*“Tenant is repeatedly late paying rent”*

The Tenant confirmed receiving the One Month Notice of March 9, 2023 and applied to cancel the One Month Notice on March 17, 2023. The Tenant agreed that the rent had been paid late on the above mentioned months; however, the Tenant stated that the Landlord is attempting to end the tenancy to re-rent the rental unit for higher rent. The Tenant stated that a similar rental unit in the rental property was listed for \$1,000.00 more per month. The Tenant disagrees that paying rent a day late three times is sufficient grounds to end the tenancy.

Analysis

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

According to Section 47 (1) of the Act, a landlord may end a tenancy by giving notice to end the tenancy for cause.

The Residential Tenancy Policy Guideline 38 states 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.

Section 26 of the Act explains that the Tenant must pay rent when it is due under the Tenancy Agreement, whether or not the Landlord complies with this *Act*.

In this case, parties agreed the Tenants are required to pay rent in the amount of \$3,236.60 to the Landlord on the first day of each month. I accept that the parties agreed that the Tenants have paid rent late in August 2022, January 2023, and March 2023.

The Landlord served the Tenants with a One Month Notice on March 8, 2023 with an effective date of April 30, 2023. I accept that the Tenant confirmed receipt on March 9, 2023 and applied to cancel the One Month Notice on March 17, 2023, within the 10 Day time limit. I find the One Month Notice was sufficiently served pursuant to Section 88 of the Act.

I find that the Landlord has submitted sufficient evidence to demonstrate that the Tenants have paid rent late on three occasions. I further accept that the Tenant

confirmed that rent was paid late in the above-mentioned months. As such, I dismiss the Tenant's Application to cancel the One Month Notice without leave to reapply.

When a tenant's application to cancel a notice to end tenancy is dismissed, and the notice complies with section 52 of the *Act*, section 55 of the *Act* requires that I issue an order of possession in favour of the Landlord. Having reviewed the One Month Notice, I find it complies with section 52 of the *Act*. Accordingly, I grant the Landlord an order of possession, which will be effective at 1:00 P.M. on April 30, 2023 after service on the Tenants.

### Conclusion

The Tenants' Application is dismissed as I have found they have been repeatedly late paying rent. As such, I grant the Landlord an Order of Possession to be effective at 1:00 P.M. on April 30, 2023 after the Order is served to the Tenants. Should the Tenants 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: April 13, 2023

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Residential Tenancy Branch