



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding NR VENTURES LTD and AGRAPO ENTERPRISES  
LTD and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC, FFL | OPR-DR  
                             OPC, FFL | OPR-DR

### Introduction

This hearing dealt with four applications made by the Landlords, NR Ventures Ltd and Agrapo Enterprises Ltd, under the *Residential Tenancy Act* (the “Act”) regarding two rental units, Property C and Property L.

NR Ventures Ltd (“NR Ventures”) applied for:

- an Order of Possession of Property C based on a One Month Notice to End Tenancy for Cause dated December 1, 2022 (the “One Month Notice for Property C”), pursuant to section 55 of the Act;
- authorization to recover the \$100.00 filing fee from one of the Tenants, AM, pursuant to section 72 of the Act; and
- an Order of Possession of Property C based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 1, 2023 (the “10 Day Notice for Property C”) pursuant to section 55 of the Act.

Agrapo Enterprises Ltd (“Agrapo”) applied for:

- an Order of Possession of Property L based on a One Month Notice to End Tenancy for Cause dated December 1, 2022 (the “One Month Notice for Property L”), pursuant to section 55 of the Act;
- authorization to recover the \$100.00 filing fee from the Tenants pursuant to section 72 of the Act; and
- an Order of Possession of Property L based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 1, 2023 (the “10 Day Notice for Property L”) pursuant to section 55 of the Act.

This matter was originally scheduled as two one-hour hearings with NR Venture's applications to be heard on April 27, 2023 and Agrapo's applications to be heard on April 28, 2023.

The Tenants and the Landlords' representatives, NR and SL, participated on both hearing dates. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

During the initial hearing on April 27, 2023, it emerged that:

- the Tenants have agreed with the Landlords to pay combined monthly rent for Property C and Property L, which are owned by NR Ventures and Agrapo respectively;
- the corporate Landlords are owned by the same or related individuals; and
- there was a prior dispute resolution proceeding (the "Prior Dispute Resolution Proceeding") involving the Tenants and both Property C and Property L (see file numbers referenced on the cover page of this decision).

Based on the foregoing, I directed that all four applications be joined pursuant to Rule 2.10 of the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure"). The parties continued and concluded their evidence and submissions with respect to all four applications on April 28, 2023.

#### Preliminary Matter – Service of Dispute Resolution Documents

The Tenants acknowledged receipt of the Landlords' notice of dispute resolution proceeding packages and documentary evidence for all four applications. I find AM was served with NR Venture's notice of dispute resolution proceeding packages and documentary evidence with respect to Property C in accordance with sections 88 and 89 of the Act. I find the Tenants were served with Agrapo's notice of dispute resolution proceeding packages and documentary evidence with respect to Property L in accordance with sections 88 and 89 of the Act.

The Tenants submitted picture files to the Residential Tenancy Branch described as proof of "harassment" and proof of lack of maintenance (leaky sinks, bathtubs, and showers). The Tenants acknowledged that they did not provide a copy of this evidence to the Landlords. According to Rule 3.15 of the Rules of Procedure, a respondent's evidence must be received by the applicant not less than seven days before the hearing. Rule 3.16 of the Rules of Procedure states that a respondent must be prepared

to demonstrate that each applicant was served as required by the Act and the Rules of Procedure. I find the Tenants did not serve their evidence on either of the Landlords as required. Therefore, I find it would not be procedurally fair for me to consider the Tenants' picture evidence. I also do not find evidence about harassment or lack of maintenance to be relevant to the issues raised in the present applications. As such, I do not consider the Tenants' picture evidence for the purpose of this proceeding.

Both sides were asked to provide written submissions following the first hearing on April 27, 2023. I have considered the parties' written submissions in this decision.

### Issues to be Decided

1. Are the Landlords entitled to Orders of Possession?
2. Are the Landlords entitled to reimbursement of their filing fees?

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Landlords' applications and my findings are set out below.

NR Ventures and one of the Tenants, AM, entered into a tenancy agreement with respect to Property C commencing on June 1, 2017, which later became month-to-month.

PC, the second Tenant, is the brother of AM. Agrapo and PC entered into a month-to-month tenancy with respect to Property L commencing on December 1, 2018.

Rent for each property was \$5,000.00 due on the first day of each month. The Landlords each collected \$5,000.00 as a security and pet damage deposit. Copies of the parties' original tenancy agreements have been submitted into evidence.

In June 2020, the Landlords and the Tenants mutually agreed to the following changes:

- The Tenants would pay a combined monthly rent of \$8,500.00 for both Property C and Property L.

- The rent due date would be changed from the first day of the month to \$1,000.00 due on the fifteenth day of the month and \$7,500.00 due on the last day of the month.

The parties attended hearings for the Prior Dispute Resolution Proceeding on August 23 and September 28, 2022, which dealt with the Tenants' applications to:

- cancel a 10 day notice to end tenancy for unpaid rent or utilities with respect to Property C (the "Previous 10 Day Notice"), and to
- cancel a one month notice to end tenancy for cause (for repeatedly late payment of rent) with respect to Property L (the "Previous One Month Notice").

The Tenants had named the Landlords' representatives as landlords and respondents in the Prior Dispute Resolution Proceeding instead of the corporate Landlords who own the properties.

In a decision dated October 4, 2022, the arbitrator set aside both the Previous 10 Day Notice and the Previous One Month Notice. The arbitrator found the Tenants had paid the overdue rent within five days of receiving the Previous 10 Day Notice, thereby canceling it. The arbitrator canceled the Previous One Month Notice on the basis of estoppel. The arbitrator found late rent payments had been accepted and the Tenants were not given reasonable notice that strict compliance with rent due dates was required.

Following this decision, the Landlords emailed a rent payment schedule to the Tenants and promptly issued 10 day notices to end tenancy for unpaid rent whenever rent was not paid in full.

According to the Landlords' summary, the Tenants were late with paying rent on three occasions before the One Month Notice for Property C and the One Month Notice for Property L (collectively, the "One Month Notices") were served. The Landlords' summary indicates as follows:

Date	Description
September 30, 2022	\$7,500.00 due and unpaid
October 1, 2022	10 day notices to end tenancy for unpaid rent attached to doors
	\$7,500.00 paid in two installments (1 day late)
October 31, 2022	\$7,500.00 due and \$0.21 unpaid
November 1, 2022	10 day notices to end tenancy for unpaid rent attached to doors

	\$0.21 paid (1 day late)
November 30, 2022	\$7,500.00 due and unpaid
December 1, 2022	10 day notices to end tenancy for unpaid rent attached to doors
	\$3,300.00 paid (1 day late)
December 7, 2022	\$4,200.00 paid (7 days late, but within 5 days of being served)

The One Month Notices both indicate repeatedly late payment of rent as the cause for ending the tenancy. Both state an effective date of January 1, 2023. The Landlords submitted signed and witnessed proof of service forms confirming that the One Month Notices were attached to the Tenants' doors on December 1, 2022.

The Tenants acknowledged receipt of the One Month Notices attached to their doors. According to the Tenants, they had been away and found the One Month Notices on December 14, 2022 when they returned. The Tenants stated that they did not dispute the One Month Notices because the Landlords had issued so many notices to end tenancy. The Tenants argued that the notices were nullified by the Tenants' payments. The Tenants alleged that some of the notices for unpaid rent were posted the day before rent was due.

On December 21, 2022, the Landlords submitted their applications for dispute resolution for Orders of Possession under the One Month Notices.

On February 1, 2023, the Landlords issued the 10 Day Notice for Property C and the 10 Day Notice for Property L (collectively, the "10 Day Notices"). The 10 Day Notices indicate that rent of \$7,500.00 was not paid on January 31, 2023. According to the Landlords, they subsequently received e-transfers totaling \$4,000.00 sent on behalf of the Tenants on February 6 and 8, 2023. The Landlords' representatives argued that the Tenants did not pay rent in full within five days of receipt to cancel the 10 Day Notices.

On February 12, 2023, the Landlords submitted direct request applications for Orders of Possession based on the 10 Day Notices, which were adjourned to be heard together with the Landlords' applications regarding the One Month Notices. In interim decisions dated March 31, 2023, the adjudicator found the Landlords' explanations regarding changes to how rent was paid for the two properties raised questions which could only be addressed in a participatory hearing.

In mid-February 2023, the Landlords notified the Tenants that rent would be accepted for use and occupancy only. E-transfers that had been sent to the Landlords were then canceled before the Landlords could deposit them on February 18, 2023.

The Tenants do not dispute the Landlords' record of rent payments from September 2022 to January 2023. However, the Tenants argued that they were not "officially late". The Tenants argued that there were explanations for late payment, such as bank holidays and e-transfer limits. The Tenants stated that their mother, who often e-transfers rent to the Landlords, was hospitalized in early February 2023. The Tenants argued that they had five days under the Act to pay the rent. The Tenants argued that the Landlords had accepted late and partial payments of rent.

The Tenants acknowledged they were informed by the Landlords in February 2023 about rent being accepted for use and occupancy only. The Tenants argued that the Landlords stopped accepting payments as rent. The Tenants indicated that they canceled the e-transfers to the Landlords due to advice they had received. The Tenants do not dispute that they did not make any further payments to the Landlords since February 8, 2023.

The Tenants argued that the Landlords used the direct request process to have the Tenants evicted without going through the already scheduled arbitration hearings.

### Analysis

#### *1. Are the Landlords entitled to Orders of Possession?*

Section 47 of the Act permits a landlord to end a tenancy for cause by issuing a one month notice to the tenant. Section 47(1) provides a list of grounds which may constitute cause under this section.

47(3) of the Act requires that a one month notice to end tenancy for cause comply with section 52 of the Act in form and content.

Section 52 of the Act states that in order to be effective, a notice to end tenancy given by a landlord must:

- be in writing
- be signed and dated by the landlord giving the notice
- give the address of the rental unit

- state the effective date of the notice
- state the grounds for ending the tenancy, and
- be in the approved (Residential Tenancy Branch) form.

In this case, I have reviewed the One Month Notices and find that they comply with the requirements of section 52 of the Act in form and content. I find the reason for ending the tenancy stated in the One Month Notices corresponds with cause under section 47(1)(b) of the Act, which is repeatedly late payment of rent. I note that according to Residential Tenancy Policy Guideline 38. Repeated Late Payment of Rent, three late payments are the minimum number sufficient to justify a notice to end tenancy under section 47(1)(b) of the Act.

I accept the Tenants' testimony that they found the One Month Notices attached to their door on December 14, 2022. I find the Tenants were served with the One Month Notices on that date in accordance with section 88(g) of the Act.

Section 47(4) of the Act permits a tenant to dispute a one month notice to end tenancy for cause within 10 days after receiving such a notice. Therefore, the Tenants had until December 24, 2022 to make applications to dispute the One Month Notices. I find the Tenants did not make any application to dispute either of the One Month Notices by December 24, 2022 or at all.

I note the Tenants' argument that the notices were "nullified" by the Tenants' rent payments. Under section 46(4)(a) of the Act, a 10 day notice to end tenancy for unpaid rent or utilities has no effect if, within five days after receiving the notice, the tenant pays the overdue rent. However, the Act does not contain a similar provision under which a one month notice to end tenancy for cause, such as for repeatedly late payment of rent, may be automatically canceled.

Pursuant to sections 47(4) and 47(5) of the Act, if a tenant who has received a one month notice to end tenancy for cause under section 47 does not make an application for dispute resolution within 10 days of receiving the notice, the tenant is "conclusively presumed" to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

In addition, the first page of the One Month Notices clearly states at the top:

**Tenant: This is a legal notice that could lead to you being evicted from your home**

**HOW TO DISPUTE THIS NOTICE**

You have the right to dispute this Notice **within 10 days** of receiving it, by filing an Application for Dispute Resolution with the Residential Tenancy Branch online, in person at any Service BC Office or by going to the Residential Tenancy Branch Office at #400 – 5021 Kingsway in Burnaby. If you do not apply within the required time limit, you are presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date of this Notice.

(emphasis underlined)

I find the Tenants did not make applications to dispute the One Month Notices, which would have allowed the Tenants an opportunity to explain why they disagree with the One Month Notices or what may have caused their late payments of rent. Instead, I find that pursuant to sections 47(4) and 47(5) of the Act, the Tenants are “conclusively presumed” to have accepted that their tenancy ended on the effective date of the One Month Notices, and were required to vacate from Property C and Property L by that date.

I note the effective date of the One Month Notices, or January 1, 2023, does not comply with section 47(2) of the Act, which requires the effective date to be:

- (a) not earlier than one month after the date the notice is received, and
- (b) the day before the day in the month, or other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Under section 53(2) of the Act, if the effective date on a notice to end tenancy is earlier than the earliest date permitted under the Act, the effective date is deemed to be the earliest date that complies with the Act.

Since I have found that the Tenants received the One Month Notices on December 14, 2022 and that the first instalment of monthly rent is due on the fifteenth day of each month, I find the corrected effective date of the One Month Notices is therefore deemed to be January 14, 2023 under section 53(2) of the Act. I note the language of the Act with respect to effective dates does not appear to contemplate situations where rent is



paid in arrears rather than in advance. However, I find this point to be moot as we are now months removed from the event.

Based on the foregoing, I conclude the Tenants are conclusively presumed to have accepted that their tenancy ended on January 14, 2023, the corrected effective date of the One Month Notices.

Where a tenant does not dispute a notice to end tenancy and does not move out of the rental unit by the effective date, sections 55(2)(b) and 55(4)(a) of the Act permit the landlord to apply for an order of possession of the rental unit as follows:

**Order of possession for the landlord**

55 [...]

(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

[...]

(b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired; [...]

[...]

(4) In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 *[Resolving Disputes]*,

(a) grant an order of possession, and

(b) if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.

(emphasis underlined)

I stress that this hearing involves applications made by the Landlords to seek Orders of Possession on the basis of undisputed notices to end tenancy issued by the Landlords, pursuant to sections 55(2)(b) and 55(4)(a) of the Act. These applications are different in nature from those made in the Prior Dispute Resolution Proceeding. In that proceeding, the arbitrator had dealt with the Tenants' applications to dispute the notices to end tenancy that they received.

In this case, I have found the One Month Notices were received by the Tenants on December 14, 2022, the time for disputing the One Month Notices expired on December 24, 2022, and the Tenants did not apply to dispute the One Month Notices by that date

or at all. I have found the Tenants are conclusively presumed to have accepted that the tenancy ended on January 14, 2023, the corrected effective date of the One Month Notices. Therefore, I find the Landlords are entitled to Orders of Possession of Property C and Property L pursuant to section 55(4)(a) of the Act, without any further dispute resolution process.

According to Residential Tenancy Policy Guideline 54. Ending a Tenancy: Orders of Possession, where the effective date on the notice to end tenancy has already passed, effective dates for orders of possession have generally been set for two days after the order is received. However, an arbitrator may consider extending the effective date of an order of possession beyond the usual two days provided. Relevant factors include the point up to which the rent has been paid and the length of the tenancy.

I accept the Tenants have been residing in Property C and Property L for several years. Nevertheless, I find it is undisputed that the Tenants continue to occupy both properties as at the dates of this hearing and have not made any payment to the Landlords since February 2023. I find that to extend the effective date of the Orders of Possession beyond the standard two days in this case would cause the Landlords unreasonable financial hardship.

Pursuant to section 55(4) of the Act, I grant NR Ventures an Order of Possession of Property C and Agrapo an Order of Possession of Property L effective **two (2) days** after service upon the Tenants.

As I have determined that the Landlords are entitled to Orders of Possession under the One Month Notices, I find it is not necessary to also consider whether the Landlords are entitled to Orders of Possession under the 10 Day Notices. I note the direction request process is available to a landlord when a tenant does not dispute a 10 day notice to end tenancy for unpaid rent or utilities. Under this process, the adjudicator can make a decision based on the landlord's written evidence alone, without a participatory hearing or input from the tenant. Accordingly, I do not find the Landlords to have engaged in inappropriate conduct to prevent the Tenants from being involved in any due process.

## *2. Are the Landlords entitled to reimbursement of their filing fees?*

The filing fee is a discretionary award that is generally granted to an applicant who has been successful in their application. Since the Landlords' claims for Orders of

Possession have been successful, I grant the Landlords reimbursement of their \$100.00 filing fees under section 72(1) of the Act.

Pursuant to section 72(2)(b) of the Act, I authorize the Landlords to each deduct \$100.00 from the Tenants' security deposits held by the Landlords in full satisfaction of the filing fees awarded.

### Conclusion

The Landlords' claims for Orders of Possession of Property C and Property L and for recovery of the Landlords' filing fees are granted.

Pursuant to section 55(4) of the Act, I grant Orders of Possession to the Landlords effective **two (2) days** after service upon the Tenants. The Tenants must be served with both Orders as soon as possible. Should the Tenants fail to comply with these Orders, these Orders may be filed in the Supreme Court of British Columbia and enforced as orders of that Court.

Pursuant to section 72(2)(b) of the Act, the Landlords authorized to each deduct **\$100.00** (total \$200.00) from the Tenants' security deposits held by the Landlords. The balance of the Tenants' security deposits must be dealt in accordance with the Act.

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: May 02, 2023

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Residential Tenancy Branch