



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## DECISION

Dispute Codes      CNC, RR, RP, PSF, LRE, FFT  
                              CNR, RR, RP, PSF, LRE, OLC, FFT  
                              OPC, MNRL, FFL

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”). The matter was set for a conference call.

The Tenants’ first Application for Dispute Resolution was made on August 23, 2023. The Tenants applied to cancel a One-Month Notice to End Tenancy for Cause (the “Notice”) dated July 2, 2023, to request a rent reduction for repairs, services or facilities agreed upon but not provided, to request an order that the Landlord make repairs to the rental unit, an order that the Landlord provide services or facilities required by the tenancy agreement or law, for an order that would suspend or set conditions on the landlord's right to enter the rental unit or site, and to recover the filing fee paid for their application.

The Tenants’ second Application for Dispute Resolution was made on September 21, 2023. The Tenants applied to cancel a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10-Day Notice”) issued on September 16, 2023, to request a rent reduction for repairs, services or facilities agreed upon but not provided, to request an order that the Landlord make repairs to the rental unit, an order that the Landlord provide services or facilities required by the tenancy agreement or law, for an order that would suspend or set conditions on the landlord's right to enter the rental unit or site, and utilities and to recover the filing fee paid for their application.

The Landlord's Application for Dispute Resolution was made on September 15, 2023. The Landlord applied to enforce a One-Month Notice to End Tenancy for Cause (the "Notice") dated July 2, 2023, for a monetary order for unpaid rent and to recover the filing fee paid for their application.

The Landlord and the Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Tenants and the Landlord were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony 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.

#### Preliminary Matters - Related Issues

I have reviewed the Tenants' applications, and I note that they have applied to cancel two Notices to end tenancy as well as for several other issues. I find that some of these other issues are not related to the Tenants' request to cancel the Notices. As these matters do not relate directly to a possible end of the tenancy, I apply section 2.3 of the Residential Tenancy Branches Rules of Procedure, which states:

##### **2.3 Related issues**

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Therefore, I am dismissing with leave to reapply, the Tenants' claims to request a rent reduction for repairs, services or facilities agreed upon but not provided, to request an order that the Landlord make repairs to the rental unit, an order that the Landlord provide services or facilities required by the tenancy agreement or law, and for an order that would suspend or set conditions on the landlord's right to enter the rental unit or site.

### Issues to be Decided

- Should the One Month Notice dated July 2, 2023, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Should the 10-Day Notice issued September 16, 2023, be cancelled?
- If not, is the Landlord entitled to an order of possession and a monetary order for unpaid rent?
- Are the Tenants entitled to the return of their filing fee?
- Is the Landlord entitled to the return of their filing fee?

### Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

Both parties agreed that the Landlord served the Tenant the One-Month Notice to end tenancy on July 2, 2023, by personal service to the Tenants. The reason for the Notice was checked off as follows:

- *Tenant is repeatedly late paying rent*

The Notice required the Tenants to move out of the rental unit by September 30, 2022. The Notice informed the Tenants of the right to dispute the Notice within ten days after receiving it. The Notice also informed the Tenant that if an application to dispute the Notice is not filed within ten days, the Tenant is presumed to accept the Notice and must move out of the rental unit on the date set out on page one of the Notice. The Tenants filed to dispute the Notice on August 23, 2023.

The Landlord testified that the Tenants have been late in paying their rent six times in the last year, in April, June, July, August, September and October 2023.

Both parties submitted that the Landlord served the Tenants with a 10-Day Notice to the Tenant on September 16, 2023, listing an outstanding rent amount of \$3,600.0.

The Tenant testified that they agreed with the Landlord, that their rent was paid late in April, June, July, August, September, and October 2023. The Tenants testified that they were late in paying the rent in April and June 2023 but that the July, August, September, and October 2023 rent had been withheld rent as the Landlord had not made repairs to the rental property.

The Tenant testified that they did not have permission from the Landlord to withhold the rent nor did they have an order from the Residential Tenancy Branch that granted them permission to withhold the rent.

The Landlord testified that due to the number of times that the Tenant has been late in paying the rent, they are seeking to end the tenancy. The Landlord requested an Order of Possession of the rental unit and a monetary order for the unpaid rent due under their 10-day notice.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 47 of the *Act* provides that a landlord may end a tenancy where the tenant is repeatedly late paying rent. The Residential Tenancy Policy Guideline #38 Repeated Late Payment of Rent, gives further guidance stating:

#### **Residential Tenancy Policy Guideline #38. Repeated Late Payment of 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 this case, I accept the sworn testimony of both parties that the Tenants have paid their rent late six times in the last twelve months. I find that this is a sufficient number of late rent payments to justify the Notice issued by the Landlord. Consequently, I dismiss the Tenants' application to cancel the Notice dated July 2, 2023.

Section 55(1) of the *Act* states:

***Order of possession for the landlord***

***55(1)*** *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 have reviewed the Notice to end tenancy, and I find the Notice complies with section 52 of the *Act*.

Therefore, I find that the Landlord is entitled to their requested Order of Possession effective two days after service on 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. The Tenants are cautioned that the costs of such enforcement are recoverable from the Tenant.

Additionally, I find that the Landlord has proven their entitlement to a monetary order for the unpaid rent for July, August, October, and November 2023, and I award the Landlord a monetary order in the amount of \$4,800.00.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenants have not been successful in their application, I find that the Tenants are not entitled to recover the \$100.00 filing fee paid for this application.

As the Landlord has been successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

The Tenants' Application to cancel the One-Month Notice, dated July 2, 2023, is dismissed. I find the Notice is valid and complies with the Act.

I grant an **Order of Possession** to the Landlord effective **two days** after service of this Order on 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.

I find for the Landlord under sections 67 and 72 of the Act and grant the Landlord a **Monetary Order** in the amount of **\$4,900.00**. 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 Tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 30, 2023

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Residential Tenancy Branch