



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes      CNC, FF

### Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution. The Tenant applied to cancel a one month Notice to End Tenancy issued for repeated late payment of rent and to recover the filing fee for the Application.

Both parties appeared for the hearing by teleconference call, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and 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.

### Issues(s) to be Decided

Has the Tenant been repeatedly late paying rent?

Is the Notice to End Tenancy valid or should it be cancelled?

### Background and Evidence

This tenancy began in September of 2005, with the parties entering into a written tenancy agreement. The rent was originally set at \$690.00 per month, payable on the first day of the month. The rent has been increased since the initial agreement.

On December 28, 2009, the Landlord issued the Tenant a one month Notice to End Tenancy, with an effective end of tenancy date of January 31, 2010, for repeated late payment of rent (the "Notice").

The Landlord provided in evidence a copy of the Tenant's Ledger, which records that the Tenant was late paying rent in August, September, November and December of 2009, and in January of 2010.

The ledger indicates that cheques were returned by the Tenant's bank as "NSF" on August 6, September 9 and December 4 of 2009, and on January 6, 2010.

The Tenant testified that in August of 2009, he made a partial payment on the first day of the month, and paid the balance of the August rent due on the 10<sup>th</sup> day of the month.

The Tenant testified that on August 31, 2009, he paid the Landlord a partial amount of the rent due on September 1<sup>st</sup>, and then paid the balance due for September of 2009, on the 5<sup>th</sup>.

The Tenant disputes the claim of the Landlord that November rent was late. He claims that the Landlord delayed depositing his cheque. The Landlord's ledger indicates a partial payment of rent on November 2, 2009, of \$325.00, with the balance being paid on November 9, 2009.

The Tenant testified that he paid the December rent on December 1, 2009, however, that cheque was returned NSF due to an error in the Tenant's bank account. The Tenant did not provide evidence, such as a letter from his bank, which would explain the error was not his. The December rent was paid on December 8, 2009.

The Tenant further testified that on January 2, 2010, he paid the Landlord by two separate cheques for the January rent.

One of the Tenant's cheques was returned as NSF on January 6, 2010, according to the Landlord's ledger.

The Tenant explained that his late payments were not his fault. He testified in August of 2009, he gave a loan of money to a friend and has had trouble receiving payments from this friend. This has caused him problems with his payments to the Landlord.

The Tenant testified that he felt he should receive "credit" for some of the advance payments he made early in the tenancy, which would balance against the late payments made in the past seven months.

### Analysis

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

I find that the Tenant has paid rent late in four different months since August 1, 2009. These include August, September and December of 2009, as well as January of 2010.

Policy guideline 38 states, in part:

The *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act* both provide 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.

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.

I find that the late payments are not sufficiently far apart to conclude the Tenant was not repeatedly late paying rent.

Therefore, I find that the Notice is valid and should not be cancelled.

**I dismiss the Tenants’ Application for Dispute Resolution.**

As the Tenant had paid rent for February of 2010, the Landlord requested an Order of Possession for the end of February.

Conclusion and Orders

The Tenant has paid his rent late in four different months since August of 2009. The Notice to End Tenancy is valid and the Tenant must vacate the rental unit.

Pursuant to section 55 of the Act, the Landlord is entitled to an Order of Possession, **effective at 1:00 p.m. February 28, 2010.** I grant and issue the Landlord an order on those terms. This order is enforceable in 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: February 04, 2010.

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Dispute Resolution Officer