



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding KAMLOOPS AND DISTRICT ELIZABETH FRY SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for cause.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by personal delivery on January 13, 2014. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

### Issues(s) to be Decided

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?

### Background and Evidence

This tenancy started on November 3, 2012 as a month to month tenancy. Rent is \$213.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$350.00 in advance of the tenancy.

The Landlord said she served the Tenant with a 1 Month Notice to End Tenancy for Cause dated January 2, 2014. The Notice to End Tenancy has an effective vacancy date of January 31, 2014, which the Landlord said she understands is incorrect and it should be February 28, 2014. The Landlord continued to say the reasons on the Notice to End Tenancy are repeatedly late rent payments, significantly interfered with or unreasonably disturbed another occupant or the landlord, seriously jeopardized the health or safety of another occupant or the landlord and the Tenant put the landlord’s property at significant risk.

The Landlord said the Tenant has been late with at least 9 rent payments and the Landlord has issued six 10 Day Notices to End Tenancy for Unpaid rent since the beginning of the tenancy in November, 2012. The Landlord said the late rent payments are unacceptable and the Landlord said she wants to end the tenancy as soon as possible. The Landlord submitted copies of 9 late rent payment receipts and six 10 Day

Notices to End Tenancy for Unpaid Rent in the evidence package. The Landlord requested and Order of Possession with an effective vacancy date of February 28, 2014 if the Tenant is unsuccessful in canceling the Notice to End Tenancy.

The Tenant said she has been a good tenant and is well liked in the rental complex as indicated in the letters she submitted from other tenants in the complex. The Tenant continued to say that she is not disputing that she has been late with many of her rent payments as she is having some challenging times financially. The Tenant agreed the rent receipts were correct. However the Tenant did say that she has only received 3, 10 Day Notices to End Tenancy for Unpaid Rent and those dates are September, 2013, January, 2014 and February, 2014. The Tenant said she did not receive the other three 10 Day Notice to End Tenancy for Unpaid Rent.

Further the Tenant said that because she was late with the rent on many occasion she understood that it was acceptable with the Landlord as long as the rent was paid at some time. The Tenant said that she did not have any written evidence for this understanding. The Landlord said there was no agreement for late payments of the rent and that the rent was due on the first of each month. The Landlord continued to say that is why the Landlord has issued six 10 Day Notices to End Tenancy for Unpaid Rent.

The Tenant said that if she is not successful in canceling the Notice to End Tenancy the effective vacancy date of February 28, 2014 would put her in a very difficult position. The Tenant asked the Landlord to extend the effective vacancy date to Sunday, March 2, 2014. The Landlord agreed to extend the effective vacancy date to Monday, March 3, 2014 if the Notice to End Tenancy stands and if the Tenant agrees not to dispute the Notice to End Tenancy further. The Tenant said she could not agree to that. The Landlord said she is retracting her offer to extend the tenancy to March 3, 2014 if the Tenant is unsuccessful in canceling the Notice. The Landlord again requested and Order of Possession for February 28, 2014 if the Tenant is unsuccessful in canceling the Notice to End Tenancy.

### Analysis

The Tenant has applied to cancel the Landlord's 1 Month Notice to End Tenancy for Cause dated January 2, 2014. There are four reasons indicated on page two of the Notice to End the Tenancy. The Notice to End Tenancy only needs one reason to be successful in order to end the tenancy. As both parties agreed the Tenant has been late with the rent payment on many occasions that is the reason that will determine the outcome of this dispute.

**Section 26(1)** says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

**Section 47(b)** of the Act states that a Landlord may end a tenancy for repeatedly late rent payments and policy guideline 38 states that three late rent payments are sufficient to justify a Notice to End Tenancy under this provision.

The Tenant does not have the right to withhold all or a portion of the rent from the Landlord when it is due. I find the Tenant has not established grounds to be granted an order to cancel the Notice to End Tenancy based on any agreement that late rent payments were acceptable to the Landlord. The Tenant was responsible to pay the rent on time or receive a written agreement for late rent payments from the Landlord. The Tenant has not provided any evidence to establish grounds that late rent payments were acceptable.

Further, I find both parties agree the Tenant has had many (9) late payments since the tenancy started in January, 2012. Section 47(b) and policy guideline 38 indicate the Landlord can end a tenancy for more than three late rent payments. Although the Tenant believed there was leniency on late rent payments from the Landlord the Tenant has not provided any evidence to support her claim. As the Tenant has been late with more than 3 rent payments; I find the Tenant has not established grounds to cancel the 1 Month Notice to End Tenancy for Cause dated January 2, 2014.

Consequently I find the Tenant has not established grounds to be entitled to cancel the 1 Month Notice to End Tenancy for Cause. I dismiss the Tenant application without leave to reapply.

Further pursuant to section 55 of the Act the Landlord has established grounds to support the 1 Month Notice to End Tenancy and the Landlord has requested an Order of Possession if the Tenant 's application to cancel the Notice to End Tenancy is unsuccessful. I award the Landlord an Order of Possession with an effective vacancy date of February 28, 2014 at 1:00 p.m.

Section 53 of the Act automatically changes the effective vacancy date on a Notice to End Tenancy if the date is incorrect. In this case the effective vacancy date of January 31, 2014 is incorrect and it is changed to February 28, 2014.

### Conclusion

The Tenant's application to cancel the Notice to End Tenancy is dismissed without leave to reapply.

An Order of Possession effective February 28, 2014 at 1:00 p.m. has been issued to the Landlord. A copy of the Order must be served on the Tenant in accordance with the Act: the Order of Possession and may be enforced in the Supreme Court of British

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 25, 2014

---

Residential Tenancy Branch