



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the one month Notice to End Tenancy was personally served on the Tenant on April 6, 2015. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on or about April 18, 2015. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a.      Whether the tenant is entitled to an order cancelling the Notice to End Tenancy dated April 6, 2015?
- b.      Whether the tenant is entitled to recover the cost of the filing fee?

### Background and Evidence

The tenancy began in August 2007. The present rent is \$1650 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$825 at the start of the tenancy.

Grounds for Termination:

The Notice to End Tenancy relies on section 47(1)(d) of the Residential Tenancy Act.

That section provides as follows:

Landlord's notice: cause

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(a) the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;

(b) the tenant is repeatedly late paying rent;

(c) there are an unreasonable number of occupants in a rental unit;

(d) the tenant or a person permitted on the residential property by the tenant has  
(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,  
(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or  
(iii) put the landlord's property at significant risk;

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

- (i) has caused or is likely to cause damage to the landlord's property,
- (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

...

(i) the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 [assignment and subletting];

Late Payment of Rent:

The landlord testified the tenant has failed to pay the full rent on time on more than three occasions including the following:

- The full rent for April 2015 was not paid until April 21, 2015
- The full rent for March 2015 was not paid until March 24, 2015
- The rent for February was paid on time

- The rent for January was not paid until January 25, 2015
- The tenant was commonly late paying the rent in 2014.

The tenant did not dispute the late payments. He testified that on one occasion he had to get a new roommate and was not able to cover the difference on time. He further testified the landlord was aware of his financial difficulties and attempted signed a form for the Ministry to get assistance.

Policy Guideline #38 provides as follows:

The *Residential Tenancy Act*<sup>1</sup> and the *Manufactured Home Park Tenancy Act*<sup>2</sup> 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

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 exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.

Whether the landlord was inconvenienced or suffered damage as the result of any of the late payments is not a relevant factor in the operation of this provision.

Based on the evidence presented the rent has been paid late on more than three occasions and the landlord is entitled to an Order for Possession. I determined the explanation of the tenant is not a sufficient defense. Given this conclusion I determined it was not necessary to consider the other grounds for ending the tenancy.

Settlement:

During the hearing the parties reached a settlement and they asked that I record the settlement pursuant to section 63(2) of the Residential Tenancy Act as follows:

- a. The parties mutually agree to end the tenancy on July 31, 2015 and ask that the arbitrator grant an Order for Possession for that date.
- b. The tenant represents that he will pay the rent in full for June 2015 on June 1, 2015 and the rent for July 2015 on July 1, 2015.

Order for Possession:

**As a result of the settlement I granted an Order for Possession effective July 31, 2015.**

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

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 28, 2015

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Residential Tenancy Branch

