



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MAVIS MCMULLEN HOUSING SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC, CNC, FF

### Introduction

This hearing was convened in response to applications by the landlord and the tenant filed under the Residential Tenancy Act (the “Act”).

The landlord’s application is seeking an order as follows:

1. For an order of possession.

The tenant’s application is seeking an order as follows:

1. To cancel a 1 Month Notice to End Tenancy for Cause.

Both parties appeared, 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 at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 11.1 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issues to be Decided

Should the Notice issued on May 5, 2015, be cancelled?  
Is the landlord entitled to an order of possession?

### Background and Evidence

The tenancy began in 2008. The tenant's rent calculation is determined by BC Housing Corporation, and is payable on the first of each month.

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on June 8, 2015; however, as the date is earlier than the Act allows that date automatically corrects to June 30, 2015.

The reason stated in the Notice was that the:

- Tenant is repeatedly late paying rent.

The landlord's agent testified that the tenant has been continuously late paying rent since the start of their tenancy in 2011, and is having an impact on their housing society. The agent stated that the tenant has accumulated rent arrears totaling \$5,889.40, as of March 2015, and in the past 12 months the tenant has been late paying rent almost every month, even after receiving written warnings. Filed in evidence is a rent ledger which supports the landlord's position.

The landlord's agent testified that the tenant has been warned, in writing, several times that they must pay rent when due under the tenancy agreement and make payments towards arrears. The agent testified that after several attempts to work with the tenant they sent an agreement to the tenant which was an attempt to get the tenant to acknowledge when their rent was due and make a payment plan towards arrears, which was signed by the tenant. Filed in evidence is a copy of the agreement dated March 25, 2015. Filed in evidence are various letters.

The agreement in part reads,

"Rent will be paid on time, on or before the 1<sup>st</sup> day of each month. An arrears payment will be paid at the same time, in the amount of \$17.00. Current rent + arrears is \$230.00. I am obligated to report to the Board by the first Wednesday of each month that this requirement has been met..."

[Reproduced a written]

The landlord's agent testified that even after the agreement was signed the tenant continued to pay rent late as they did not pay rent for May 2015, until May 5. The agent stated that they can no longer continue the tenancy.

The tenant testified that they have complied with the agreement. The tenant stated that on April 30, 2015, they contacted the manager's office and informed them that they had to work until 3:30 pm and they were told they would wait; however, later received a call back to say that they could no longer wait as they had to leave the office due to a sick child.

The tenant testified that they went to pay their rent on Friday, May 1, 2015; however the office is not open on Fridays. The tenants stated that they called the office and left a message and when their call was returned they were told that they could go downtown or wait to pay the agent the following week. The tenant indicated they chose to wait and paid the rent, which was paid on Tuesday, May 5, 2015; however by that time the landlord had given them the Notice.

The advocate stated that they believe the landlord cannot prove any more than one late payment of rent, if any, because when the tenant and landlord signed the agreement on March 25, 2015, the tenant had the right to rely on the landlord's action that the tenancy would continue and there can no longer used any of the previous history.

The advocate referred to the paragraph in the March 25, 2015, which reads in part,

"I would like to do whatever I can to ensure that you and your daughter are able to remain at (name removed). Please sign the below and return this letter to the (name removed) office by noon on Thursday, March 26<sup>th</sup>, to confirm that we have an agreement that:..."

[Reproduced as written]

The landlord's agent argued at no time where they waiving their rights under the Act. The agent stated the agreement was simple to get the tenant to pay rent on time as they continue to invest a lot of time simply to get the tenant to pay rent.

The landlord's agent argued that the tenant is fully aware of office hours which are normally 10:00am to 3:00 pm, if they chose to pay rent in cash. The agent stated that the tenant can pay rent by money order or cheque to ensure rent is paid on time and those payments can be left at the office at any time. The agent stated that the office was open on Monday May 4, 2015, from 8:00 am to 5:30 pm, which the door to the office was left open. The agent stated that the tenant at no time attempted to pay rent.

The agent stated it was only after they posted the Notice on the door that the tenant paid their rent.

### Analysis

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

How to end a tenancy is defined in Part 4 of the Act. Section 47(1)(b) of the Act a landlord may end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent.

A Notice issued under this section of the Act must comply with section 52 of the Act – Form and content.

Upon my review of the Notice, I find the Notice complies with the requirements of section 52 of the Act.

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the:

:

- Tenant is repeatedly late paying rent.

I accept the parties entered into an agreement on March 25, 2015. I have reviewed and considered the agreement, I find there is nothing in the agreement that waives or implies a waiver of the landlord's right to provide the past history of the tenant's late payment of rent should a breach of the agreement occur.

I have also reviewed and considered the letter attached to the signed agreement filed in evidence by the landlord, also dated March 25, 2015, which reads in part,

"These conditions are not negotiable and they are already in place as terms in your lease agreement. Please sign the agreement letter (additional copy enclosed) and return to the (name removed) office by noon on Thursday, March 26<sup>th</sup> and adhere to the conditions identified within it so as to **not jeopardize your house.**"

[Reproduced a written]  
[My emphasis added]

In this case, the tenant had accumulated a significant amount of rent arrears during the tenancy. Rent had been late approximately nine times in the past 12 months based on the rent ledger filed in evidence by the landlord.

Further, I find the agreement signed on March 25, 2015, by the tenant, which acknowledged rent would be paid on or before the 1<sup>st</sup> day of each month, is simply reconfirming the tenant's obligation under the Act and the original tenancy agreement to pay rent on time. The rent arrears payment was an agreement to repay the outstanding debt, rather than to end the tenancy for unpaid rent, which there was no requirement under the Act for the landlord to enter into such an agreement.

The letter attached to the agreement indicated that the tenant must adhere to the condition as to not jeopardize their tenancy. I find this was a reasonable statement based on the rent payment history of the tenant and was sufficient notice that any breach of the agreement would be grounds to end the tenancy under the Act.

While I accept the tenant made a call to the landlord's office on April 30, 2015, that they were working during the office hours and unable to attend and the office indicated that they would stay open later than normal to accommodate the tenant's work scheduled; however, the office later called the tenant that they could no longer wait as they had a sick child. The landlord is not under any obligation to accommodate the tenant's work schedule. It was the tenant's obligation to make alternate arrangements, such as have someone make the payment on their behalf, if the payment was to be made in cash or alternatively place a cheque or money order in the landlord's mail box.

Further, even, if I accept the office was closed on Friday, May 1, 2015, as Friday is a day the office is normally not open, which would automatically extend the date to the next business day which was May 4, 2015. The evidence of the landlord's agent was that the office was open from 8:00am to 5:30pm on May 4, 2015, for the tenant to pay rent. The tenant provided no evidence or explanation why rent was not paid on May 4, 2015. However on May 5, 2015, the tenant paid rent only after being served with the Notice.

I find the tenant has been late paying rent on at least 9 occasions in the past 12 months. I find the Notice issued on May 5, 2015, has been proven by the landlord and is valid and enforceable.

Therefore, I dismiss the tenant's application to cancel the Notice issued on May 5, 2015.

Therefore, I find tenancy legally ended on the corrected effective date of the Notice, which is June 30, 2015.

I find the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective no later than **1:00 pm on June 30, 2015**. A copy of this order must be served on the tenant.

I note during the hearing the advocate requested that if the Notice is upheld, that they seek to have the effective date extended to at least July 31, 2015, due to the tenant's family situation.

However, as there is a history of non-payment of rent and the arrears are already at a significant amount, I decline to extend the effective date of the notice.

However, the enforcement of the order of possession is at the discretion of the landlord.

### Conclusion

The tenant's application to cancel the Notice, issued on May 5, 2015, is dismissed.  
The landlord is granted an order of possession.

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: June 23, 2015

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Residential Tenancy Branch

