



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, MNDC, RR, O

### Introduction

This was a hearing with respect to the tenant's application to cancel a one month Notice to End Tenancy for cause, for a monetary award and for other relief. The hearing was conducted at the Residential Tenancy Office in Burnaby. The tenant attended with his advocate. The landlord attended with her interpreter.

### Issue(s) to be Decided

Should the Notice to End Tenancy dated April 25, 2015 be cancelled?  
Is the tenant entitled to a monetary award and if so, in what amount?

### Background and Evidence

The rental unit is the main floor of a house in Vancouver. The tenancy began in August, 2013. There was a previous hearing with respect to this tenancy. It was conducted by conference call on May 14, 2015. The tenant applied to cancel a Notice to End Tenancy for landlord's use and claimed a monetary award. In the decision dated May 25, 2015 the arbitrator noted that the landlord withdrew the Notice to End Tenancy and she granted the tenant a monetary award of \$130.00 to be deducted from a future rent payment.

In the application before me the tenant has applied to cancel a one month Notice to End Tenancy for cause. In his initial application he also requested a monetary award in the amount of \$515.00. He later amended his application to claim an award of \$7,115.00.

At the hearing the landlord testified that she served the tenant with a one month Notice to End Tenancy for cause dated April 25, 2015. The Notice to End Tenancy required the tenant to move out of the rental unit by May 31, 2015. The ground for the Notice to End Tenancy is that the tenant has been repeatedly late paying rent. The tenant filed his application to dispute the Notice to End Tenancy within 10 days after he received it.

The landlord submitted some documentary evidence with respect to rent payments by the tenant. She said that he failed to pay the full amount of rent for November; the

monthly rent is \$1,100.00 and the tenant paid only \$800.00 for November. The landlord said the tenant paid \$1,100.00 on November 30, 2014 as payment of December rent. She said he was still short \$300.00 for November and she considered the December payment to be late as well. The landlord said that the tenant was late in January and paid January rent plus a further \$300.00 on January 5<sup>th</sup>. The landlord said the tenant was late in February. She referred to text messages exchanged between the tenant and the landlord's daughter with respect to rent payments. The landlord included copies of text messages concerning payment of rent in November, in December and in February.

The tenant acknowledged that he did not pay the full rent for November. He said that he paid December rent on time. He noted that he regularly paid the landlord in cash and until recently did not receive receipts for his payments.

The landlord had other concerns and complaints about the tenant and his conduct, but she did not state any other grounds in her Notice to End Tenancy apart from late payments of rent and I declined to hear evidence about other issues. The tenant also had complaints and issues that related to the conduct of the other occupant of the rental property. The tenant has complained about her interference with his quiet enjoyment and denial of heat by interfering with the operation of the furnace.

The other occupant has moved out of the rental unit and although the tenant said that he had doubts about whether she had fully moved out, he acknowledged that his problems with the downstairs tenant had been resolved.

During the hearing I provided the parties with an opportunity to discuss a possible agreement to resolve their dispute. The parties were not able to agree to any settlement of the matters in dispute in this proceeding, but the tenant did agree that he would withdraw a different dispute resolution proceeding against the landlord that is set for hearing on July 29, 2015, regardless of the outcome of this proceeding. Since the hearing was conducted on July 9, 2015 the tenant has cancelled the July 29<sup>th</sup> hearing.

In his application for dispute resolution the tenant requested a monetary award in addition to the request to cancel the Notice to End Tenancy. The tenant said that he was claiming compensation of \$515.00 as well as \$6,600.00, being the equivalent of six months' rent for loss of quiet enjoyment and denial of service. The tenant said that he considered the landlord's Notices to End Tenancy to amount to harassment and he sought compensation for his time to respond to the Notice and file applications at the Residential Tenancy Branch. At the hearing the tenant acknowledged that his claim for six months' rent as compensation may be an inflated claim.

### Analysis

The landlord has claimed that the tenant has been repeatedly late paying rent. In her evidence she referred to late payments in November, December, January and

February. The landlord did not provide bank deposit records or rent ledger information to support her statements as to late payments, although she did submit some text messages wherein the tenant acknowledged that he had been late.

The tenant provided copies of receipts that the landlord provided showing that his rent for April and May was paid in cash before the first of each month.

*The Residential Tenancy Act* provides by section 47 (1) (b) that a landlord may end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent. Residential Policy Guideline #38 states that: "Three late payments are the minimum number sufficient to justify a notice under these provisions." The policy guideline also contains the following comments:

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

The *Act* does not define what constitutes "repeatedly late". The policy guide says that three late payments are the minimum that would warrant the issuance of a Notice. The guideline also states that exceptional circumstances may be taken into account when determining whether a tenant has been repeatedly late paying rent.

I accept that the landlord's evidence shows that the tenant was late paying rent in November and again in February, but I do not accept that the tenant was late in December; he paid the December rent on time but did not pay the arrears for November until January. He was late again in February, according to a text message that he sent, but I do not have evidence to show that he was late in January. The landlord has the burden of proving the late payment and she has not submitted any account records to show that the tenant was late in January. The tenant has provided evidence to show that payments thereafter have been on time.

I find that the landlord has not proved that the tenant has been late paying rent on three occasions, which according to the Policy Guideline, is the minimum necessary to constitute repeatedly late payments. I therefore allow the tenant's application and I order that the Notice to End Tenancy dated April 25, 2015 be, and is hereby cancelled. The tenancy will continue until ended in accordance with the *Residential Tenancy Act*.

Turning to the tenant's application for a monetary award, I note that the tenant made a previous monetary claim. He withdrew part of his earlier monetary claim and proceeded with claims for amounts including the cost of wood and a heater. He was given an award for inconvenience and a lack of heat. I find that the tenant's claim was also brought in other proceedings and dealt with or withdrawn. Based on the evidence provided at this hearing I do not find that the tenant is entitled to a monetary award for loss of quiet enjoyment and I do not consider that the landlord's Notice to End Tenancy lacked a valid basis or that it amounted to harassment. I therefore dismiss the tenant's claim for a monetary award without leave to reapply.

### Conclusion

The Notice to End Tenancy has been cancelled. The tenancy will continue.

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: July 15, 2015

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Residential Tenancy Branch

