



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding AMOS REALTY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, MT

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Tenant on May 30, 2016 to cancel a 1 Month Notice to End Tenancy for Cause (the "Notice") and for more time to make the Application.

An agent for the Landlord, the property manager, an assistant for the Landlord's agent, and the Tenant appeared for the hearing. However, only the Tenant and the Landlord provided affirmed testimony during the hearing. The Landlord's agent confirmed receipt of the Tenant's Application and written evidence which was served by registered mail pursuant to Section 89(1) (c) of the *Residential Tenancy Act* (the "Act"). The Tenant confirmed receipt of the Landlord's documentary evidence which was served to her prior to the hearing.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence provided. I have carefully considered the evidence provided by the parties in this case but I have only documented that evidence which I relied upon to make findings in this decision.

### Issue(s) to be Decided

- Has the Tenant established that the Notice ought to be cancelled?
- Is the Landlord entitled to an Order of Possession?

### Background and Evidence

Both parties agreed that this tenancy started on March 28, 2015 for a fixed term of one year which then continued on a month to month basis. The parties signed a written tenancy agreement which requires the Tenant to pay rent in the amount of \$900.00 on

the first day of each month. The Tenant paid a security deposit of \$450.00 at the start of the tenancy which the Landlord still retains. The parties confirmed that there were no rental arrears at the time of this hearing.

The Landlord's agent testified that the Tenant was served with the Notice on May 9, 2016 by posting it to the rental unit door. The Notice was provided into evidence and shows a vacancy date of June 30, 2016. The reason for ending the tenancy is because the Tenant is alleged to have paid rent late repeatedly during this tenancy.

The Tenant confirmed receipt of the Notice on her door on May 12, 2016. When the Tenant was asked why she had disputed the Notice outside of the ten day time limit provided by Section 47(4) of the Act, the Tenant testified that her grandma had passed away and that she had to go back and forth to her home town and that the stress of the Notice was too much for her to deal with.

The Landlord had submitted documentary evidence of 12 occasions when the Tenant had paid her rent late during the last 15 months of this tenancy, including two notices to end her tenancy for unpaid rent which were served to the Tenant. The Tenant confirmed that she had been given an opportunity to look over the Landlord's evidence and admitted to some of these late payments. The Tenant testified that the Landlord had no issues with her making late rent payments and this is why she continued to do so.

The Landlord testified to the most recent late rent payments, namely January, May and June 2016 which were all paid late. The Tenant did not dispute that these were paid late and asked the Landlord for leniency as she had now set up a direct payment method which would prevent any issue of late rent payments. However, the Landlord stated that he wanted to end the tenancy as the Tenant had been given plenty of chances to pay her rent despite several notices to end the tenancy. The Landlord denied that they had given the Tenant an indication that she could continue to pay late rent in this tenancy.

### Analysis

Having examined the Notice, I find that the form and content of the Notice complied with Section 52 of the Act. I also find that it was served to the Tenant on May 9, 2016 by attaching it to the rental unit door pursuant to Section 88(g) of the Act. The Tenant confirmed that she received the Notice on May 12, 2016. Section 47(4) of the Act gives a tenant ten days to make an Application to dispute a Notice.

Section 47(5) of the Act states that if a tenant fails to make an Application within the ten day time limit, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the Notice and must vacate the rental unit.

Therefore, as the Tenant received the Notice on May 12, 2016, the Tenant would have had until May 23, 2016 to make the Application to dispute the Notice. However, the Tenant did not make the Application until May 30, 2016, this being outside of the time limit permitted by the Act.

The Tenant applied for more time to cancel the Notice on the Application. Section 66(1) of the Act allows an Arbitrator to extend a time limit established by the Act only in exceptional circumstances. In this case, I find that the Tenant's oral evidence alone that she had to deal with her grandmother's passing is not sufficient for me to extend the time limits as the Tenant failed to provide any evidence to corroborate her testimony and how this prevented her from making the Application with time limit set by the Act. As a result, the Tenant's Application for more time to cancel the Notice is denied.

Accordingly, pursuant Section 47(5) of the Act, I find the Tenant is conclusively presumed to have accepted the Notice and the tenancy must now end. Furthermore, Section 26 of the Act requires a tenant to pay rent on the day that it is due. In this case, I find that the Landlord and Tenant established a written tenancy which made it clear that the Tenant had an obligation to pay rent on the **first** day of each month. Policy Guideline 38 to the Act 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."*

[Reproduced as written]

Based on the foregoing, I find the Tenant's acknowledgement that she had paid rent late three times within the last six months is sufficient to justify the Notice. As a result, the Tenant's Application to cancel the Notice is dismissed.

Section 55(1) of the Act states that if a tenant makes an Application to dispute a Notice the Arbitrator **must** grant an Order of Possession if the Notice complies with the Act and the tenant's Application is dismissed. As the effective date of the Notice has now passed, the Landlord is entitled to a two day Order of Possession. If the Tenant fails to vacate the rental unit after the order is served on her, the order may be enforced in the Supreme Court of British Columbia as an order of that court. Copies of the order are attached to the Landlord's copy of this decision.

### Conclusion

The Tenant's Application to cancel the Notice is dismissed without leave to re-apply. The Landlord is granted a two day 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 Act.

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 31, 2016

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Residential Tenancy Branch