



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of a 1 Month Notice to End Tenancy For Cause, pursuant to section 47
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

The tenant's application was filed within the time period required under the Act.

### Issues

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

The rental unit is one half of a duplex house. A written tenancy agreement was entered into and signed by the parties on October 3, 2014. A copy of the written agreement was provided on file. The tenancy began on October 3, 2014 with a monthly rent of \$800.00 payable on the 1<sup>st</sup> day of each month. The tenant paid a security deposit of \$400.00 at the start of the tenancy.

The landlord served the tenant with the 1 Month Notice on May 30, 2016 on the grounds that the tenant is repeatedly late paying rent. In the hearing, the Landlord submitted that the address of the rental unit in the 1 Month Notice was incorrectly recorded as the address of the duplex as listed on the Land Title search. This address is actually for the other half of the duplex. The address for service of the tenant in the 1 Month Notice is the correct address and is the address of the rental unit occupied by the tenant. The tenant acknowledged receiving the 1 Month Notice.

The landlord provided rent receipts dating back to January 2016. According to the receipts and the testimony of the landlord, the tenant was late paying rent in January, February, March, April and May 2016. The 1 Month Notice was issued to the tenant on May 30, 2016. Rent was also late in June 2016 and paid on time in July 2016.

The tenant's main argument in disputing the 1 Month Notice was that the landlord is only trying to end the tenancy as the landlord has plans to sell the rental unit. With respect to the rent being repeatedly late, the tenant testified that it was the landlord that failed to collect the rent on time and receipts were not often issued until two weeks after the rent was collected. The tenant also acknowledged that rent was not always paid on the 1<sup>st</sup> of every month.

The tenant's witness R.M. testified that rent was never paid late and he knew this as he was always at the rental unit.

The other occupant T.C. testified that they always tried to pay the rent money on time but they could not always locate the property manager or the landlord. She testified that the property manager only came around when he wanted to and the landlord only accepted cash so that rent was difficult to pay on time.

### Analysis

Section 52(b) of the Act requires a Notice to End Tenancy to include the address of the rental unit. In this case, the 1 Month Notice was not in strict compliance with the Act as the address of the rental unit was incorrectly recorded as the address for the other half of the duplex property.

Section 68(2) of the Act allows me to amend a notice given under the Act that does not comply with the Act. The 1 Month Notice reflected an incorrect address of the rental unit. This error does not affect the substance of the 1 Month Notice, that is, the tenant was allegedly repeatedly late in making rent payments. The tenant acknowledged receiving the notice and the fact that the tenant made an application to dispute the 1 Month Notice, is evidence that the tenant knew the Notice was in reference to the rental

unit he occupied. For these reasons, I am exercising my discretion to amend the 1 Month Notice to change the address of the rental unit to reflect the same address as indicated on the Notice as the address for service of the tenant and find the amended Notice is in compliance with section 52 of the Act.

Section 47 of the Act contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 47(4) of the Act, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 1 Month Notice.

In this case, the landlord issued the 1 Month Notice pursuant to paragraph 47(1)(b) of the Act, which permits a landlord to terminate a tenancy if the tenant has been repeatedly late paying rent. Residential Tenancy Policy Guideline #38 Repeated Late Payment of Rent provides that a minimum of three late payments constitutes cause pursuant to paragraph 47(1)(b) of the Act. In exceptional circumstances, an arbitrator may consider the reason(s) for the late payments.

Pursuant to section 26 of the Act, the tenant has the obligation to pay rent when it is due under the tenancy agreement. The tenancy agreement sets out that rent is due on the first day of each month.

I accept the landlord's evidence that rent was paid late on at least a minimum of three occasions dating back to January 2016. I accept the rent receipts submitted by the landlord to be an accurate and credible reflection of the actual dates and amounts of rent payments made by the tenant. I find the tenant's testimony that the receipts were not issued until weeks after the actual payments were made to lack credibility. If this were truly the case, I find it would have been sensible for the tenant to request the landlord issue receipts that accurately reflected the date on which the payments were made. There was not any evidence that the tenants made such requests. Further, the argument put forward by the tenant is highly unlikely as throughout the period of January 2016 to June 2016 there were multiple receipts issued by the landlord within a single month, which supports the landlord's testimony that the tenant was not able to come up with the full amount of the rent when it was due. For example, in the month of May 2016, the landlord issued a receipt on May 2, 2016 in the amount of \$400.00, May 15, 2016 in the amount of \$350.00 and again on May 22, 2016 in the amount of \$50.00. The obligation to pay rent in full and on time is on the tenant; therefore, the tenants reasons that the landlord or the property manager could not be located and that the landlord would not accept cash payments are not exceptional circumstances that would

warrant late payments. Further, the tenant's allegation that the landlord is only wanting to end the tenancy as he plans to sell the rental unit is not relevant to a finding of whether or not the landlord had cause to end the tenancy on the grounds of late payments.

I find that the landlord has provided sufficient evidence to justify that it had cause to issue the 1 Month Notice on the grounds of repeated late payments. The tenant's application to cancel the 1 Month Notice is dismissed and the landlord is entitled to an Order of Possession pursuant to section 55 of the Act. The tenant has paid rent in full for the month of July 2016; therefore, the Order of Possession will be effective July 31, 2016. In the hearing, the landlord agreed to not enforce this order until August 31, 2016 provided the tenant pays rent for the month of August in full on or before August 1, 2016.

As the tenant was not successful in this application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application from the landlord.

### Conclusion

I grant an Order of Possession to the landlord effective **July 31, 2016**. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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, 2016

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Residential Tenancy Branch