



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1932374 ALBERTA LTD. O/A CATHAY RESORT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes

CNC

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, received at the Residential Tenancy Branch on August 31, 2016 (the "Application"). Pursuant to the *Residential Tenancy Act* (the "Act"), the Tenants applied for an order cancelling a 1 Month Notice to End Tenancy for Cause, dated August 26, 2016, which had an effective date of September 30, 2016 (the "1 Month Notice").

The Tenants were represented at the hearing by M.A.C. The Landlord was represented at the hearing by C.H. Both parties in attendance provided a solemn affirmation.

No issues were raised with respect to service or receipt of the Notice of a Dispute Resolution Proceeding, or of the documentary evidence relied upon by each party. The parties were in attendance, acknowledged receipt of the other party's documentary evidence, and were prepared to proceed.

The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer to only the relevant facts and issues in this Decision.

### Background and Evidence

Ownership of the rental property transferred to the Landlord in or about June 2016. However, the parties confirmed that the month-to-month tenancy began on June 1, 2014. Rent is currently \$750.00 per month and is due on the first day of each month. The Tenants paid a security deposit of \$350.00 at the beginning of the tenancy.

On behalf of the Landlord, C.H. provided oral testimony in support of the 1 Month Notice. He testified that the Tenants have been repeatedly late paying rent. In support, the Landlord submitted copies of notices to end tenancy for unpaid rent or utilities dated June 8, September 12 and November 20, 2015. A fourth notice appears to have been issued in December 2015, but was not correctly dated.

C.H. also testified that further notices to end tenancy for unpaid rent or utilities were issued in January, February and June 2016, and that rent has not been paid in full for the month of October 2016. Copies of the notices to end tenancy for unpaid rent or utilities in 2016 were not included with the Landlord's documentary evidence. However, the Tenants' documentary evidence did include copies of receipts issued for rent payments received by the Landlord. The receipts confirm that, in 2016, rent was received after the first day of the month in January, February, March, April, May, June and August 2016.

In response to the testimony provided by C.H., M.A.C. stated the Tenants understood rent was due on the first day of each month, but that late payments were regularly accepted by the previous owner of the rental property and on-site manager. She testified to her understanding that notices to end tenancy for unpaid rent or utilities were merely a formality and that, until recently, the Tenants got along with the on-site manager.

### Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 47 of the *Act* permits a Landlord to end a tenancy for cause in the circumstances described therein. In this case, the Landlord wishes to end the tenancy for cause on the bases that the Tenants have been repeatedly late paying rent; have significantly interfered with or unreasonably disturbed another occupant or the Landlord; have put the landlord's property at significant risk; have caused extraordinary damage to the unit or property; and have not done required repairs to the unit. The burden is on the Landlord to provide evidence in support of ending the tenancy.

On behalf of the Landlord, C.H. provided oral testimony concerning rent payments. In addition, he provided oral testimony and documentary evidence confirming notices to end tenancy for unpaid rent or utilities were issued in 2015 and 2016. C.H.'s testimony was supported by the Tenants' own documentary evidence confirming late payments of rent.

Residential Tenancy Branch Policy Guideline 38 provides clarification with respect to ending a tenancy on the basis of repeated late payments of rent. It states:

*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...*

...

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

In this case, the parties agreed, and I find, that rent is due on the first day of each month. However, the Landlord has adduced documentary evidence, which I accept, confirming the Tenants have been late with their rent payment more than the minimum number of times required to justify ending a tenancy on this basis. This finding is supported by the Tenants' own documentary evidence.

The Tenant stated that late payments were a practice that was accepted by the Landlord and the on-site manager. However, I find the issuance of multiple notices to end tenancy for unpaid rent or utilities to be incompatible with M.A.C.'s evidence that this was a practice accepted by the Landlord.

Accordingly, the Tenants' Application is dismissed and the 1 Month Notice is upheld.

When a tenant's application to cancel a notice to end tenancy is dismissed, and the notice complies with section 52 of the *Act*, section 55 of the *Act* requires that I issue an order of possession in favour of the Landlord. Having reviewed the 1 Month Notice, I find it complies with section 52 of the *Act*. Accordingly, I grant the Landlord an order of possession, which will be effective two (2) days after service on the Tenant.

As the tenancy has ended based on the basis that the Tenants have been repeatedly late paying rent, it has not been necessary for me to consider the other bases for ending the tenancy indicated on the 1 Month Notice.

Conclusion

The Tenants' Application is dismissed and the 1 Month Notice upheld.

The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenant. The order of possession may be filed in 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: October 27, 2016

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Residential Tenancy Branch