



# 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 tenancy began with a previous landlord on December 1, 2015 with a monthly rent of \$900.00 plus \$70.00 for utilities payable on the 1<sup>st</sup> day of each month. The current landlord took possession of the house in April 2016 and the tenancy continued.

The landlord served the tenant with the 1 Month Notice on September 11, 2016 on the grounds that the tenant is repeatedly late paying rent, breached a material term of the

tenancy agreement and failed to pay a pet deposit within 30 days as required by the tenancy agreement.

On the grounds of repeated late payments of rent, the landlord submits that the tenant paid rent late on the following occasions:

- I. June rent paid on June 4<sup>th</sup> and was short \$70.00, balance paid on June 18, 2016.
- II. August rent paid on August 4, 2016.
- III. September rent paid on September 5, 2016. The landlord submits he received an e-transfer request on September 2, 2016 but he wasn't provided with a security password until September 5, 2016.

The landlord referred to copies of interact e-mail transfers submitted by both the landlord and the tenant as evidence of the late payments.

The tenant testified that after the landlord purchased the rental property they were trying to communicate ways in which to pay the rent but nothing was set. She submits she did not have the full name, banking information or address for the new landlord. She paid \$900.00 in cash on June 4<sup>th</sup> and the remaining balance of \$70.00 was paid by e-transfer on June 18, 2016. The tenant submits the \$70.00 balance was not late rent as it was for utility payment and was sent by e-transfer to confirm a method of payment for future rent. The tenant submits the August rent was sent by e-transfer but her original e-mail didn't go through so she resent it on August 4, 2016. The tenant submits the September rent was sent just after midnight on September 1, 2016 which is why the e-transfer is dated September 2, 2016. She submits that the landlord should have had the security password as it was same as previous months.

### Analysis

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, one of the grounds the landlord issued the 1 Month Notice is 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.

The obligation to pay rent in full and on time is on the tenant. Although in this case the landlord should have provided the tenant with information on how and where to pay rent to the new landlord, I dismiss the tenant's argument for this being a valid reason for late payment of rent. The tenant had the opportunity to pay the rent in full when she paid a portion of the rent on June 4, 2016 in cash. The tenant failed to pay the rent in full on this date. The balance was not paid until June 18, 2016. The definition of "rent" under the Act includes money agreed to be paid for the use of service and facilities so I dismiss the tenants claim that the balance did not constitute "rent" as it was for utilities. Utilities are a service or facility provided by the landlord to the tenant and the agreement required a payment of \$70.00 for utilities on the first of the month. The tenant also argued that this \$70.00 was withheld with the agreement of the landlord so the parties can set-up future rent payments by e-transfer. I dismiss this argument as the tenant provided insufficient evidence to support it was agreed to by the landlord.

The tenant acknowledged rent was paid late in August 2016. The tenant submits the September rent was sent after midnight on September 1, 2016 which is late even if the tenant had provided a security password.

I accept the landlord's evidence that rent was paid late on at least a minimum of three occasions.

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. As such, I find it not necessary to make a finding on the other two grounds for ending the tenancy as indicated on the Notice.

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.

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 **two days after service of this Order** on the tenant. 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: November 10, 2016

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Residential Tenancy Branch