



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MT, CNC, FF

### Introduction

This hearing dealt with a tenant's Application for Dispute Resolution (the "Application") under the Residential Tenancy Act (the "Act") for:

- more time to file their application to cancel the landlord's One Month Notice To End Tenancy for Cause (the "One Month Notice");
- cancellation of the landlord's One Month Notice; and
- recovery of the filing fee paid for this application from the landlord.

The landlord and the tenant appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlord and tenant were given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

### Preliminary and Procedural Matters

The landlord submitted 34 pages of late evidence to the Residential Tenancy Branch on December 1, 2016. The tenant testified that he received the landlord's documentary evidence only a couple of days before the hearing and that he hadn't had an opportunity to review the evidence. The landlord testified that he received the tenant's Application on or about November 12, 2016 and that the landlord thought he had submitted the evidence on time. The tenant objected to the evidence being considered at the hearing without having had an opportunity to review it first. Based upon the tenant's objections, the parties agreed that I would not consider the landlord's documentary evidence and instead the landlord could give oral testimony about the documents.

It is not necessary to address the tenant's claim for more time to file their application to cancel the landlord's One Month Notice as the tenant's Application was filed within the permitted timeframe.

Issue(s) to be Decided

- Should the landlord's One Month Notice be cancelled?
- Is the tenant entitled to recovery of the filing fee paid for this application from the landlord?

Background and Evidence

The landlord and tenant testified that a month to month tenancy started September 1, 2012 pursuant to a tenancy agreement signed August 3, 2012. At the start of the tenancy the rent was \$1,800.00 due on the first day of each month. The landlord testified that the rent was reduced to \$1,560.00 effective August 1, 2016 due to a reduction in services by the landlord that were originally included in the rent. The tenant testified that he thought that the rent was only \$1,540.00 monthly. The landlord testified that the tenant paid \$1,560.00 each month except for December 2016 when the tenant only paid \$1,540.00 leaving a \$20.00 shortfall. The tenant then acknowledged the shortfall explaining that it was an honest mistake on his part.

The landlord testified that the tenant has been repeatedly late paying rent and the tenant confirmed the landlord's testimony in this regard.

The landlord testified that on September 2, 2016, the landlord issued the tenant with a 10 Day Notice to End the Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") for the full amount of rent that was due on September 1, 2016. The landlord testified that the tenant paid the overdue rent within five days of being issued the 10 Day Notice.

The landlord testified that on October 3, 2016, the landlord issued the tenant with a 10 Day Notice for unpaid rent in the amount of \$1,560.00 that was due on October 1, 2016. The landlord testified that the tenant paid the overdue rent within five days of being issued the 10 Day Notice.

The landlord testified that on November 3, 2016, the landlord issued the tenant with a 10 Day Notice for unpaid rent in the amount of \$1,060.00 that was due on November 1, 2016. The landlord testified that the tenant paid the overdue rent within five days of being issued the 10 Day Notice.

The landlord and tenant agreed that since the start of the tenancy the landlord had been flexible in working with the tenant by accepting late rent without making it an issue. The

landlord testified that he had a discussion with the tenant on June 17, 2016 to inform him that he needed to start paying his rent on time when it was due. The tenant did not recall having had such a discussion, however, the tenant confirmed receipt of the three 10 Day Notices.

The landlord testified that he served the tenant with a One Month Notice on November 8, 2016, which had an effective date of December 31, 2016, by handing him a copy. The landlord testified that he wants to end the tenancy due to the tenant's repeated late payment of rent. The tenant confirmed having received the One Month Notice on November 08, 2016 and that the date noted on the tenant's application was a typo.

### Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows.

I find that the tenant has been repeatedly late paying rent for each of the months of September, October, November and December 2016. While the landlord may have waived reliance on the due date for rent to be paid in the past, I accept the landlord's evidence that the landlord informed the tenant on June 17, 2016 that he would be enforcing this provision. In any event, the tenant ought to have known that the landlord was enforcing the due date for rent once the landlord issued a 10 Day Notice in September and each month thereafter when the rent wasn't paid by the due date. Accordingly, I am satisfied that the landlord has established sufficient cause to end the tenancy pursuant to section 47 of the *Act* due to repeated late payment of rent.

I find that the One Month Notice complies with s.52 of the *Act* and that the landlord served the One Month Notice in accordance with the *Act*. Therefore, I find that the tenant is not entitled to cancellation of the One Month Notice and I uphold the notice to end the tenancy.

Pursuant to section 55 of the *Act*, when the landlord's notice to end a tenancy complies with section 52 of the *Act* and I am dismissing the tenant's Application, I am required to grant an order of possession. As a result, I find the landlord is entitled to an order of possession to take effect December 31, 2016 at 1:00 p.m., which is the effective date on the One Month Notice.

Conclusion

I dismiss the tenant's application to cancel the One Month Notice dated November 8, 2016 and I uphold the One Month Notice.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **December 31, 2016 at 1:00 p.m.** Should the tenant 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 final and binding on the parties, unless otherwise provided under the *Act*, and 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: December 20, 2016

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Residential Tenancy Branch