



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

<u>Dispute Codes</u>	Landlord:	OPC O
	Tenant:	CNC

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Landlord's Application for Dispute Resolution is dated November 15, 2016 (the “Landlord's Application”). The Landlord applied for the following relief pursuant to the *Act*:

- an order of possession based on a 1 Month Notice to End Tenancy for Cause, dated November 1, 2016 (the “1 Month Notice”);
- other unspecified relief.

The Tenant's Application for Dispute Resolution was received at the Residential Tenancy Branch on November 2, 2016 (the “Tenant's Application”). The Tenant applied for an order cancelling the 1 Month Notice, pursuant to the *Act*.

The Landlord was represented at the hearing by M.S., his son. The Tenant attended the hearing on her own behalf. Both M.S. and the Tenant provided affirmed testimony.

M.S. and the Tenant confirmed receipt of the other party's Application package on November 18, 2016. I find that both parties were served with the respective Application packages on that date. Both parties were represented at the hearing and were prepared to proceed. No issues were raised with respect to service or receipt of these documents.

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

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Landlord entitled to an order of possession based the 1 Month Notice?
2. Is the Tenant entitled to an order cancelling the 1 Month Notice?

### Background and Evidence

The Landlord submitted a copy of the tenancy agreement between the parties into evidence. It confirms a fixed-term tenancy for the period from May 1, 2016 to April 30, 2017. Rent in the amount of \$800.00 per month is due on the first day of each month. The Tenant paid a security deposit of \$400.00.

On behalf of the Landlord, M.S. testified that, among other reasons, the Landlord wished to end the tenancy based on repeated late payments of rent. He testified that the Tenant was late paying rent in July and September 2016, and that no rent has been received for December 2016. In support, M.S. provided copies of written warnings issued to the Tenant. The Tenant did not dispute receiving the warning letters.

In reply, the Tenant acknowledged rent was paid late in July and September 2016, but stated it was subsequently paid in full. M.S. agreed. The Tenant also acknowledged that rent has not been paid for December 2016. She cited job difficulties, issues with plumbing in the rental unit, a dispute regarding smoking, and the Landlord's refusal to accept rent. The Tenant testified that she intends to move out of the rental unit at the end of December 2016.

In light of my findings below, I have not found it necessary to address the remainder of the evidence submitted by the parties.

### Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find:

Section 47 of the *Act* permits a landlord to end a tenancy for cause for the reasons listed therein. In this case, one of the reasons the Landlord wished to end the tenancy was on the basis that the Tenant has been repeatedly late paying 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.*

[Reproduced as written.]

During the hearing, the Tenant acknowledged rent was paid late in July and September 2016, and that rent for December 2016 has not been paid. I find the Tenant has been late paying rent on three occasions since July 2016. Accordingly, the Landlord is entitled to an order of possession, which will be effective two (2) days after service on the Tenant.

As the tenancy is ending on the basis of repeated late payments of rent, I have not found it necessary to address the other bases for ending the tenancy indicated on the 1 Month Notice.

As the Landlord has been successful, I grant the Landlord an award of \$100.00 as recovery of the filing fee paid to make the Landlord's Application, which I order may be deducted from the security deposit paid by the Tenant.

The Tenant's Application is dismissed.

Conclusion

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.

The Tenant's Application is dismissed.

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: December 19, 2016

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Residential Tenancy Branch