



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PINE GLEN APARTMENTS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: CNC OPC

### **Introduction:**

Both parties attended the hearing and gave sworn testimony. They confirmed the Notice to End Tenancy dated November 25, 2016 to be effective December 31, 2016 was served by posting it the door and the tenant served his Application personally. The tenant's Application shows a filing date of December 16, 2016 which is out of time to dispute. However, the tenant's mother explained the Residential Tenancy Office had lost the Application for a time. I accept this explanation of administrative error so choose to continue the hearing. The tenant applies to cancel the Notice to End Tenancy for cause pursuant to section 47 of the *Residential Tenancy Act* (the Act).

**Issues:** Is the tenant entitled to any relief?

### **Background and Evidence:**

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. It is undisputed the tenancy began on June 1, 2012, rent is \$638 a month and the tenant paid a security deposit of \$312.50. The landlord served the Notice to End Tenancy pursuant to section 47 for the following reasons:

- a) The tenant is repeatedly late in paying the rent.

The landlord said on the Notice that the tenant had paid rent late for 11 of the past 12 months. In the hearing, he explained that the co-tenant paid half of the rent through the ministry but this tenant is persistently late in paying his half. He read out the ledger for the past several months to illustrate. He said on July 4, 2016, the tenant caught up from past arrears and paid \$681 which made a zero balance. Then he paid nothing until October 12, 2016 so there was no rent paid in August or September. After paying on October 12, 2016, the ledger shows he was still \$86 in arrears. In November, he paid on November 2 leaving \$82 in arrears. December's payment was made on December 9 and January's on January 3.

The tenant's mother gave evidence that the landlord had made an agreement with the tenant that he could catch up on his rent payments. The landlord said there was no

specific agreement; he merely told the tenant (as he does with others) that he needed to catch up. He said the tenant knew his tenancy was in jeopardy for he received many 10 Day Notices. In his written statement, the tenant said, "I have not been late for months".

The tenant's mother said the small balances owing in October and November were due to late fees which he was not aware of. She said he always caught up although he had lost his job for a time. Before this manager took over, she said the office was always closed on holidays and weekends so rent would be paid after a weekend or holiday whereas this manager has it always open. She said the real reason for ending the tenancy is that the manager harasses the tenant's room mate who is disabled and the tenant stands up for him. She also listed many repairs needed, especially to heating and doors which she said have been neglected. I advised her that the application was to cancel a Notice to End Tenancy and not to hear an application for repairs so I declined to consider this. The tenant indicated that he would appeal a Decision granting an Order of Possession so the landlord requested the effective date on the Order of Possession be as soon as possible.

In evidence is the Notice to End Tenancy and a written statement from the tenant. Based on the oral and written submissions, a decision is made.

**Analysis:**

The Notice to End a Residential Tenancy is based on cause pursuant to section 47 of the Act. The *Residential Tenancy Act* permits a tenant to apply to have the Notice set aside where the tenant disputes it. I find section 26 of the Act requires a tenant to pay the rent on time, whether or not the landlord fulfills their obligations under the Act. I find the weight of the evidence is that this tenant has been repeatedly late in paying his rent which is good cause to end the tenancy pursuant to section 47 of the Act. I find he was late in paying rent for August, September and October 2016 and again in November 2016. Although the tenant said the manager had made an agreement with him to catch up on his rent, I find insufficient evidence of any agreement and the manager denies this. The manager said he had issued numerous 10 Day Notices for unpaid rent to the tenant which contradicts the idea of an agreement. I also find insufficient evidence of an ulterior motive of the landlord for ending the tenancy. I therefore dismiss the tenant's application to cancel the Notice to End the Tenancy.

Section 55(1)(a) provides that the arbitrator must grant an order of possession of the rental unit if the landlord makes an oral request for an order of possession at a hearing where an arbitrator has dismissed the tenant's application pursuant to section 47 and has upheld the Notice. The landlord has made this request at the hearing. As a result I grant the landlord an Order for Possession effective two days from service.

**Conclusion:**

I grant the landlord an Order for Possession effective two days from service. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement. I dismiss the tenant's application without recovery of the filing fee.

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: January 19, 2017

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Residential Tenancy Branch