



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes          CNC, FF, MNSD

### Introduction

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

- an order to cancel the landlord's One Month Notice To End Tenancy for Cause (the "One Month Notice");
- a monetary order to keep all or part of the security deposit; and
- recovery of the filing fee paid for this application from the landlord.

The landlord S.M. (the "landlord") appeared at the teleconference hearing and gave affirmed testimony. The tenant also appeared at the teleconference hearing and gave affirmed testimony. The landlord appeared with his common-law partner, E.B., who stated that she was also a landlord, although not named in the application. The landlord's common-law partner was affirmed, however, the testimony at the hearing was given by the landlord named in the application. 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 named on the tenant's application is not the same landlord named in the tenancy agreement. The undisputed evidence of the landlord and tenant is that the landlord named on the tenant's application purchased the property in June 2016 from the previous landlord who is named on the tenancy agreement.

The tenant withdrew his application for a monetary order to keep all or part of the security deposit.

### Issue(s) to be Decided

- Should the One Month Notice ending tenancy for cause issued on December 15, 2016 be cancelled or must the landlord be issued an Order of possession?

### Background and Evidence

The evidence of the landlord and tenant established that a month to month tenancy started on January 15, 2016 pursuant to a written tenancy agreement. At the start of the tenancy the rent was \$2,395.00 which was reduced to \$2,295.00 effective August 1, 2016 as the tenant gave up one parking space that had been included in the rent.

The landlord and tenant agreed that a One Month Notice was served on the tenant by attaching a copy to the tenant's door on December 15, 2016. The One Month Notice indicated that the tenant was required to vacate the rental unit on February 1, 2017.

The reasons stated for the One Month Notice were:

- that the tenant has been repeatedly late paying his rent; and
- that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;

The landlord testified that the tenant paid the rent late for each of the months of August 2016, October 2016 and December 2016. The tenant agreed that he was late paying rent for each of the months of August and December 2016. However, the tenant disputed that he paid the rent late for October 2016. The tenant testified that he sent an email transfer for the rent payment to the landlord on October 1, 2016.

The landlord submitted evidence of an email transfer for payment of the October rent by the tenant. The email transfer shows a date of October 2, 2016 at 8:52. The landlord testified that the date shown on the email transfer is the actual date the email transfer was sent to the landlord and not when the landlord opened the email to receive the funds.

The tenant could not recall the specific time of day that the email transfer for October's rent was sent and acknowledged that the landlord is probably correct. The tenant did not submit any evidence for the hearing and he did not have any proof that the email transfer was sent on October 1, 2016, the day when rent was due.

## Analysis

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

I find that the landlord has provided sufficient evidence in support of the reasons given on the One Month Notice regarding late payment of rent.

I find that the tenant did not provide sufficient evidence that he paid the rent when it came due on October 1, 2016. The tenant acknowledged that he paid the rent late that was due on August 1, 2016 and December 1, 2016. Accordingly, I find that the tenant paid rent late for each of the months of August 2016, October 2016 and December 2016.

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. Accordingly, I dismiss the tenant's application to cancel the One Month Notice.

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 February 1, 2017 at 1:00 p.m., the effective date set out in the One Month Notice.

As the tenancy will end due to the late payment of rent, I do not need to consider the other reason set out in the landlord's One Month Notice that is disputed by the tenant.

As the tenant's application is not successful, the tenant's claim for recovery of the filing fee is also dismissed.

## Conclusion

The tenant's application is dismissed without leave to reapply and the One Month Notice is upheld.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective February 1, 2017 at 1:00 p.m., subject to the Order being served on the tenant. 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 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: January 25, 2017

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Residential Tenancy Branch

