



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

CNC, RP, OLC, RR, FF

### **Introduction**

This hearing was convened in response to an application by the tenant to cancel a One Month Notice to End Tenancy For Cause (the Notice to End), dated February 24, 2017, with an effective date of March 31, 2017. The application is further inclusive of a request for the landlord to make certain repairs and for a reduction of rent based on unfulfilled repairs.

Both parties attended the hearing and were given opportunity to present all relevant evidence and testimony in respect to the application and to make relevant prior submission to the hearing and participate in the conference call hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged exchange of all evidence. The parties were given opportunity to mutually resolve their dispute to no avail.

### **Issue(s) to be Decided**

Is the notice to end tenancy valid?

Has the landlord presented *sufficient* cause to end the tenancy?

*The landlord bears the burden of proof in respect to the Notice to end and the tenant bears the burden to support the balance of their claims.*

### **Background and Evidence**

This tenancy started in 2011. The current payable rent is \$910.67 however the parties agreed that the tenant has been paying \$944.36 since January 2017 on written notification of the landlord of a rent increase with which the tenant does not agree as they were not given a legal rent increase by the landlord in the *approved form* as required by Section 42 of the Act. The tenant claims they were advised by the Residential Tenancy Branch to currently pay the requested increase and to bring the matter forth at the hearing. The parties effectively agreed the difference in rent for the short period of the last 3 months will be credited to the tenant in the amount of \$101.07, and the rent remains at \$910.67 until the rent is increased in accordance with the Act.

Of relevance in this proceeding is that the written tenancy agreement states the monthly payable rent is due on the 3<sup>rd</sup> of every month.

The tenant submitted a copy of the Notice to End dated February 24, 2017. The Notice to End was issued for the sole reason:

- *Tenant is repeatedly late paying rent.*

The tenant is disputing the Notice to End.

The parties agree that the rent has been paid in cash since 2011 however the landlord has not issued a receipt for the cash rent unless the tenant has requested same, which has occurred infrequently. Both parties provided their versions of documentation claiming to prove the payment dates for the cash rent, and it is undisputed that the parties' evidence is in agreement in respect to 3 months in which the rent was paid later than the date due in 2016, and 1 month into 2017 in which the rent was paid at 1:00 a.m.: 1 hour after the date due. In that particular event the parties agreed they were each available for the payment transaction of the cash rent in the amount of \$1200.00.

It is agreed that in all of the relevant period in dispute the landlord did not provide rent receipts to the tenant for the cash rent payments upon which the tenant can rely to

show when the rent was paid. Regardless, the landlord claims their version of the evidence should suffice to prove the date for payment of the rent.

In addition, the tenant claims they have verbally informed the landlord with their request for various required repairs to the unit to which the landlord has not responded. The tenant provided photo images of the repairs they seek. The landlord testified the tenant has not informed them of the claimed issues for repair, however, in the past they have attended to repairs of which they were informed.

### **Analysis**

*The full text of the Act, Regulation, and Residential Tenancy Policy Guidelines can be accessed via the RTB website: [www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant) .*

On preponderance of all the evidence in this matter I find as follows.

In part for this type of application the burden of proof rests with the landlord to provide evidence that the Notice to End was validly issued for the reason(s) stated and that the reason(s) are *sufficient* to end the tenancy.

I find the tenancy agreement states the payable rent is due on the 3<sup>rd</sup> of a month. The landlord's historical practice is to invoice the tenant (which they refer as a *statement*) for the rent before the rent due date and the tenant has been paying the rent in cash since the outset of the tenancy in 2011. I find the landlord and the tenant each provided complementary evidence of 3 late payments in 2016 and 1 late payment in 2017. They each provided unsigned *statements* for the rent stating the date when the rent was satisfied for the months of February (written in statement 208302), October and November 2016. By that evidence in those months the rent was late 2 days in February, and 1 day in each of the latter two months. In addition, the landlord provided a letter from the tenant dated February 03, 2017 acknowledging they are late paying their rent and consequently paid the rent 1 hour after the date due, at 01:00 a.m. on February 04, 2017. As expressed by the landlord I accept this particular payment, logically, was late.

For the remaining months of 2016 and 2017 the landlord provided their personal copies of the *statements* indicating when the rent was satisfied. Effectively, in these remaining *statements* the landlord wrote the received dates which, however, did not find their way to the tenant's copies to serve as a confirmation or receipt for when the rent was paid toward compliance with Section 26(2) of the Act. As a result, I decline to assign evidentiary weight to those remaining *statements* upon which the landlord relies to support their burden to prove the rent payment dates. The tenant did not receive these remaining *statements* and could not elaborate as a result. What is left is the agreed evidence the rent was late February, October and November 2016 and February 2017.

I find the late agreed payment of rent for February 2016 sufficiently distant from the other 3 late payments (7 months) that it cannot be said is part of a grouping of dates claimed as *repeatedly* late dates. I find that leaves undisputed evidence of 3 late payments: each of 1 day in October and November, 2016 and a late payment of rent of 1 hour in February, 2017.

**Residential Tenancy Policy Guideline 38 – Repeated Late Payment of Rent** states that three late payments are the *minimum* number sufficient to justify a 1 Month Notice pursuant to Section 49(1)(b) of the Act. I have considered that the tenant's rent is current and that the 3 late payments of rent have been late 1 day on two occasions and 1 hour on the third occasion. I note the relevant policy in this matter is intended as a guideline to be held against the overall circumstances giving rise to the dispute. In this case I find I have not received evidence supporting that in receiving the cash rent for February 2017, 1 hour past 11:59 p.m. on February 03, 2017, the landlord was inconvenienced or placed them at a disadvantage, or otherwise prejudiced them. I find that ending a tenancy is a serious matter with serious consequences. In *this case* having considered all the circumstances I decline to hold the tenant accountable to the recommended *minimum* threshold for ending the tenancy. I find the landlord has not provided evidence establishing sufficient cause to end the tenancy. As a result I find

the Notice to End dated February 24, 2017 is **cancelled** and is of no effect. However, the tenant should take note they have come perilously close to losing their tenancy and the landlord is, if necessary, at liberty to issue a new Notice to End for which previous late payments of rent may be found relevant to support a new Notice to End for repeated late payments of rent.

In respect to the tenant's request the landlord be Ordered to make repairs, I find the tenant has not provided evidence they notified the landlord of required repairs until recently. I find it would not be appropriate to Order the landlord make repairs when they have not been placed on notice of the need for repairs and given opportunity to make the repairs. As a result, I **dismiss** this portion of the tenant's application, with leave to reapply. None the less, with a view to averting possible future dispute or litigation between the parties I make the following Orders in concert with **Section 32** of the Act and the **Act Regulation: Schedule, Section 8; Repairs**, as well as **Section 26(2)** of the Act.

**I Order** that within 7 days of the date of this Decision the tenant must provide the landlord with a 1 page written request stating what needs repair in the rental unit.

**I Order** the tenant's request must be reasonable and pertain to repairs required for health, safety or to make the rental unit suitable for occupation by the tenant, or in order to comply with housing standards as required by law.

If the landlord does not make the required repairs within 30 days of receiving the tenant's written request it is available to the tenant to file for dispute resolution for additional relief. I find that in the circumstances a reduction of rent is not an appropriate or valid remedy and this request of the tenant is **dismissed**.

**I Order** the landlord must provide valid receipts for all rent *paid in cash* from April 01, 2017 onward. The receipts must clearly indicate the date the payment of

cash is received and must be signed by the landlord.

As the tenant was in part successful in this application they are entitled to recover their filing fee.

**I Order** that the tenant may deduct **\$100.00** from a future rent in satisfaction of the filing fee for this matter.

### **Conclusion**

The tenant's application in relevant part is granted and the balance dismissed, with leave to reapply. The landlord's Notice to End is set aside and is of no effect. The tenancy continues in accordance with the tenancy agreement.

**This Decision is final and binding.**

*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: April 05, 2017

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Residential Tenancy Branch