



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This hearing was convened by way of conference call in response to the Tenant's Application for Dispute Resolution (the "Application") filed on March 2, 2017 to cancel a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice"), and to recover the filing fee from the Landlord.

The Tenant, the Landlord, and agent for the Landlord appeared for the hearing and provided affirmed testimony. The Landlord's agent confirmed receipt of the Tenant's Application. The only evidence provided by the Tenant prior to this hearing was the 1 Month Notice. The Tenant confirmed receipt of the Landlord's USB digital evidence which was the only evidence provided by the Landlord prior to this hearing. The parties were informed as to how the hearing would proceed and no questions were asked of the hearing process.

### Issues(s) to be Decided

Should the 1 Month Notice be cancelled?

### Background and Evidence

The parties agreed that this tenancy started on February 1, 2011 for a fixed term of one year which then continued on a month to month basis. Although neither party provided a copy of the signed tenancy agreement into evidence, the parties confirmed that rent under the tenancy agreement was payable by the Tenant in the amount of \$1,400.00 which was inclusive of utilities. The parties confirmed that the tenancy agreement requires the Tenant to pay this on the first day of each month.

The Tenant paid the Landlord a security deposit of \$700.00 at the start of the tenancy which the Landlord still retains.

The Landlord's agent testified that the Tenant had habitually paid rent late in this tenancy. The Landlord was asked to provide specific dates the Tenant had paid rent late within the last year. The Landlord's agent testified that for some of the months, the Tenant paid rent in two installments throughout the month.

The Landlord's agent testified that the Tenant paid cash to the Landlord in an envelope and for the most part the Landlord recorded the date it was received on the envelope. The Landlord's agent confirmed that the Tenant had not been provided with rent receipts unless she requested them.

The Landlord's agent testified that as a result, the Tenant was personally served with the 1 Month Notice on March 1, 2017. The 1 Month Notice details a vacancy date of March 31, 2017 and the reasons for ending the tenancy elected were:

- The Tenant is repeatedly late paying rent;
- The Tenant has put the Landlord's property at significant risk; and
- The Tenant has engaged in illegal activity that has, or is likely to damage the Landlord's property.

The Landlord testified that in 2017, the Tenant has only paid rent on time for March 2017. The Landlord's agent explained that other than this month the Tenant has not paid rent on time and the Landlord is getting tired of having to receive rent late each month.

The Tenant confirmed receipt of the 1 Month Notice on March 1, 2017. The Tenant acknowledged that the tenancy agreement signed by her stipulated that rent was payable on the first day of each month. The Tenant testified that at the start of the tenancy she often paid her rent in two installments, half in the middle of the month and the other half at the end of the month. However, the Tenant stated that in the last few months she has realised that her rent should be paid on the first day of each month.

The Tenant submitted that often when she did make late payments it was because the Landlord insisted that she pay her rent in cash at the Landlord's place of business, which for some months was closed on the first day of each month.

I asked the Tenant to confirm the dates that she had paid rent in this tenancy that the Landlord's agent had testified to. The Tenant then stated that she could not recall the exact dates she had paid rent and could not confirm or deny the dates testified to. The Tenant also testified that she could not confirm or deny that she paid her rent on time in

this tenancy. However, the Tenant did confirm that she had paid her rent for March 2017 on time and that she had paid rent for April 2017 late, namely on April 5, 2017.

The Tenant also explained that several years ago in this tenancy she had not paid rent for two months because she was paying to get herself an education. Therefore she was in debt of \$2,800.00. However, the Tenant has since paid installments on top of her rent payments and that the debt is currently at \$1,650.00.

The Tenant closed her arguments by stating that while she had made late rent payments in this tenancy, she had still paid rent for each of the months and was working hard to pay down the rental arrears. The Tenant stated that if her tenancy were to end, she would struggle to find another place to go to as she is a single mother who has three children, one with autism. The Tenant asked that this be taken into consideration.

The Landlord's agent confirmed the amount of the Tenant's rental arrears and that the Tenant has indeed been paying the debt down. At the conclusion of the hearing, I offered the parties an opportunity to have a discussion to resolve this matter by mutual resolution. However, despite a short discussion, the parties were unable to reach an agreement. Therefore, I make the following findings as follows.

### Analysis

In examining the 1 Month Notice, I find that the contents and the approved form used comply with Section 47(3) and 52 of the Act. I find the manner in which it was served to the Tenant also complied with the Act and I find the Tenant disputed it within the ten day time limit afforded to her under Section 47(4) of the Act.

However, when a landlord serves a 1 Month Notice, it must detail a vacancy date that allows for one full rental months of notice before it takes effect as required by Section 47(2) of the Act. In this case, the 1 Month Notice was served on March 1, 2017 and therefore does not allow for one full rental months of notice.

Section 53 of the Act allows for the vacancy date to self-correct if it does not comply with the Act. Therefore, the vacancy date on the 1 Month Notice is corrected to April 30, 2017 to allow for the correct legal time period before the 1 Month Notice can take effect.

When a landlord serves a tenant with a 1 Month Notice, the landlord bears the burden to prove it on the balance of probabilities. A landlord only needs to prove one of the reasons on the 1 Month Notice for it to be valid and effective. Therefore, I first turn my mind to the Landlord's reason for ending the tenancy for repeatedly late payment of

rent. Section 26 of the Act requires a tenant to pay rent on the day that it is due whether or not the landlord complies with the Act. In this case, I am satisfied by the undisputed oral evidence of the parties that the tenancy agreement signed required the Tenant to pay rent on the first day of each month. Policy Guideline 38 states, in part:

*“The Residential Tenancy Act provides that a landlord may end a tenancy where the tenant is repeatedly late paying rent. 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. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be “repeatedly” late.”*

[Reproduced as written]

In this case, I find the Tenant’s rebuttal evidence was weak. The fact that the Tenant was neither able to confirm or deny the late payment dates provided by the Landlord or confirm whether she had made her rent payments on time in this tenancy, makes her oral evidence dubious.

The Act and the tenancy agreement require a tenant to pay their rent on time. If a tenant is unable to make their rent payment on the day it is due, for example if a bank was closed on the first day of each month, the tenant is required to anticipate this and ensure that payment is made prior to the day it is due thereby ensuring they meet their terms and obligations under the Act and the tenancy agreement. A landlord should not expect to have rent paid to them only when the Tenant is in possession of that money

On the balance of probabilities, I am satisfied by the evidence before me that the Tenant has failed to pay rent on time more than three times in this tenancy. As the Landlord has proved repeatedly late payment of rent, I must uphold the 1 Month Notice for this reason. As the Landlord has proved one of the reasons on the 1 Month Notice, there is no need for me to make findings on the remaining two reasons to end the tenancy as these are now moot. As a result, I dismiss the Tenant’s Application to cancel the 1 Month Notice and recover her filing fee.

Section 55(1) of the Act states that if a tenant makes an Application to dispute a notice to end tenancy the Arbitrator **must** grant an Order of Possession if it complies with the Act and the tenant’s Application is dismissed.

As I have made a finding that the 1 Month Notice complies with the Act and the Tenant’s Application is dismissed, the Landlord must be granted an Order of

Possession. This order is to take effect at 1:00 p.m. on April 30, 2017 in accordance with the corrected vacancy date of the 1 Month Notice. The Act does not allow me to take factors, such as the difficulty a tenant may have from having to vacate the rental unit, as a means to extend this time limit.

The Tenant must be served with a copy of the order and this may be then be enforced through the Supreme Court of British Columbia if the Tenant fails to vacate the rental unit on this date and time. The Tenant may be held liable for any enforcement costs incurred by the Landlord.

### Conclusion

The Tenant has been repeatedly late paying rent and the 1 Month Notice dated March 1, 2017 is upheld. The Landlord is granted an Order of Possession effective at 1:00 p.m. on April 30, 2017 to end the tenancy. The Tenant's Application is dismissed without leave to re-apply.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: April 06, 2017

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Residential Tenancy Branch