



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FF MNDC MNR MNSD OPC, CNR FF O OLC

### Introduction

This hearing dealt with applications from both the landlords and the tenant under the Residential Tenancy Act ("the Act"). The landlord applied for an Order of Possession for Cause pursuant to section 55; a monetary order for unpaid rent and/or utilities pursuant to section 67; authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46; an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62; and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The landlord confirmed receipt of the tenant's Application for Dispute Resolution (ADR) and evidentiary materials. The tenant confirmed receipt of the landlord's ADR and evidentiary materials.

### Preliminary Matter

The tenant applied for cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent. The landlord acknowledged having previously issued a 10 Day Notice for Unpaid Rent however he testified that he was not relying on that notice to end this tenancy. The tenant acknowledged also receiving a 1 Month Notice to End Tenancy for Cause ("1 Month Notice") however he did not apply to dispute this notice.

I will proceed to consider the validity of the 1 Month Notice issued by the landlord. Despite the tenant's failure to file to dispute the 1 Month Notice, the landlord is still

required to provide proof sufficient to prove that he has grounds to end the tenancy for Cause. I also note that the tenant was present and allowed to provide response to the landlord's application for an Order of Possession for Cause. Finally, as the landlord testified that he does not intend to proceed on the 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice"), indicating that the tenant has paid all outstanding rent as of the date of this hearing, I dismiss the tenant's application to cancel the 10 Day Notice. As the tenant testified that his claim that the landlord comply with the Act also relates to the provision of notices to end tenancy, I dismiss that application, as well.

#### Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for Cause?

Are the landlords entitled to a monetary order for unpaid rent and/or utilities?

Are the landlords entitled to retain all or a portion of the tenant's security deposit?

Are the landlords entitled to recover the filing fee for this application?

Is the tenant entitled to recover the filing fee for this application from the landlord?

#### Background and Evidence

This tenancy began on February 16, 2016 for a fixed term of 3 months and 15 days. The parties agreed that the tenancy has continued on a month to month basis after the expiry of the fixed term tenancy. The rental amount of \$1800.00 was payable on the first of each month. A copy of the residential tenancy agreement was submitted as evidence at this hearing. The landlord continues to hold a \$900.00 security deposit paid by the tenant at the outset of this tenancy (February 16, 2016). The landlord applied to retain that deposit towards a monetary award of \$3388.32 in outstanding rent and utilities. He also sought an Order of Possession for the rental unit. At the hearing, the landlord provided undisputed testimony that the tenant has made payments and currently owes \$1141.97 in utilities only to the landlord. The tenant testified that he would pay the outstanding utilities by the end of the business day of this hearing.

The landlord provided undisputed testimony that the tenant continues to pay his rent late on a regular basis. He submitted copies of his bank records showing the deposits for the monthly rental amount for the past several months. He testified that the tenant's rent is due on the first of each month and that he has reminded the tenant of this fact. Despite these regular reminders, he testified that the tenant is repeatedly late in his rent payments.

The landlord referred to his bank statements, with deposits from the tenant. They reflected late rent payments for the previous 6 months as follows;

November 3, 2016  
December 5, 2016  
January 3, 2017  
February 6, 2017  
March 6, 2017  
April 7, 2017  
April 21, 2017

The tenant acknowledged his late rent payments. He testified that the landlord has always been aware of his paying rent late and continues to rent to him. He testifies that he always pays his rent over the course of the month and that he is a respectful tenant. The landlord did not dispute this testimony but submitted that he is suffering financially and emotionally by not receiving his rent payments on time. The tenant suggested that the landlord was merely issuing this 1 Month Notice for Cause as a result of the tenant's application to dispute and cancel the landlord's previously issued 10 Day Notice to End Tenancy.

### Analysis

The landlords provided undisputed evidence that the tenant has paid rent late for the previous six months. The landlords provided undisputed evidence that the tenant paid 2-5 days late from November 2016 to March 2017. The landlords provided undisputed sworn evidence that the tenant paid rent over two payments on April 7, 2017 and April 21, 2017. The tenant did not dispute this testimony however he argued that his late payment of rent is the norm and, as the landlord has accepted his late rent payments repeatedly, he should not be required to vacate the residence.

It is ultimately the tenant's responsibility to pay rent in full and on time every month. In this matter, section 26 puts responsibility squarely on the tenants for payment of rent, whether a residential tenancy agreement is written or oral.

Section 26(1) of the *Act* establishes that "a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent."

The landlords have applied to end this tenancy pursuant to a 1 Month Notice for Cause for repeatedly late rental payments by the tenants. Residential Tenancy Policy Guideline No. 38 provides guidance with respect to an application to end tenancy for late payment 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. 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*

The tenants argue that, since their rent is always paid and always late, the landlord has accepted this arrangement. While a tenant may be entitled to claim that a landlord has waived a late payment of rent when the landlord accepts payment unconditionally and issues a 10 Day Notice for Unpaid rent, a tenant is not entitled to claim that the landlord has made some agreement to pay rent late when the rent is repeatedly late: the repeated late payment of rent is the very nature of this ground to end tenancy for cause.

I am satisfied that the landlord had sufficient grounds to issue the 1 Month Notice and obtain an end to this tenancy for cause based on the tenants failure to pay rent on time repeatedly. The tenant has not made an application pursuant to section 47(4) of the Act to dispute this 1 Month Notice. The tenant has paid the outstanding rent amount but has, again, paid his rent late in March and April 2017. Based on my finding that the landlord has proved the tenant is repeatedly late in paying his rent, the landlord is entitled to a 2 Day Order of Possession for the rental unit.

At the hearing, the landlord provided undisputed testimony that the tenant owes \$1141.97 in utilities only to the landlord. However, as the tenant pointed out, the landlord had not provided the tenant with a 30 day written demand letter. While the landlord is entitled to be paid for the outstanding utilities, he must apply after the tenant has had 30 days to pay the balance owed. Therefore, I dismiss the landlord's application for a monetary order. I note that the tenant testified that he would pay the outstanding utilities by the end of the business day of this hearing.

As the landlord is not entitled to a monetary order at this time, he is not entitled to retain the tenant's security deposit to set off any amount granted to the landlord. Therefore, I dismiss the landlord's application to retain the tenant's security deposit with leave to reapply after the end of the tenancy and the completion of the condition inspection of the unit.

As it was necessary for the tenant to make an application as a result of the issuance of a 10 Day Notice that the landlord ultimately chose not to rely on, I find that the landlord and tenant's filing fees offset each other.

### Conclusion

The tenant's application to cancel a 10 Day Notice to End Tenancy is dismissed.  
The tenant's application to have the landlord comply with the Act is dismissed.

The landlords' application for a monetary order for unpaid rent and/or utilities is dismissed with leave to reapply.

The landlords' application to retain all or a portion of the tenant's security deposit is dismissed with leave to reapply.

The landlords' application to recover the filing fee for this application is dismissed.  
The tenant's application to recover the filing fee for this application is dismissed.

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) 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 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 26, 2017

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Residential Tenancy Branch