



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

CNC MNDC AAT RR O FF

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, received at the Residential Tenancy Branch on April 18, 2017, and amended on May 4, 2017 (the "Application"). The Tenants applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a One Month Notice to End Tenancy for Cause, dated April 29, 2017 (the "One Month Notice");
- a monetary order for money owed or compensation for damage or loss;
- an order allowing access to (or from) the unit or site for the Tenants or the Tenants' guests;
- an order allowing the Tenants to reduce rent for repairs, services of facilities agreed upon but not provided;
- an order granting recovery of the filing fee; and
- other unspecified relief.

The Tenants attended the hearing on their own behalves, as did the Landlord. All parties in attendance provided a solemn affirmation.

The Tenants confirmed that their Application package, including the Notice of a Dispute Resolution Hearing and documentary evidence, was served on the Landlord by registered mail on April 18, 2017. Further, the Tenants testified the Amendment to an Application for Dispute Resolution was served on the Landlord, in person, on or about May 2, 2017. The Landlord acknowledged receipt of the Tenants' Application package and Amendment.

The Landlord submitted documentary evidence in response to the Tenants' Application. The Landlord testified that the documentary evidence upon which she relied was served on the Tenants, in person. The Tenants confirmed receipt on May 10, 2017.

No further issues were raised with respect to service and receipt of the above documents, and I find that all parties were served in accordance with the *Act*. The parties were provided an opportunity to present their evidence orally and in written and

documentary form, and to make submissions to me. I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer to only the relevant facts and issues in this Decision.

### Preliminary and Procedural Matters

Rule 2.3 of the Rules of Procedure permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most important issue to address is whether or not the tenancy will continue based on the One Month Notice. Accordingly, I find it appropriate to exercise my discretion to dismiss all but the Tenants' Application to cancel the One Month Notice and their request to recovery the filing fee. The Tenants are granted leave to reapply for the remainder of the relief sought at a later date, as appropriate.

### Issues

1. Are the Tenants entitled to an order cancelling the One Month Notice?
2. Are the Tenants entitled to an order granting recovery of the filing fee?

### Background and Evidence

The Landlord submitted with her documentary evidence a copy of the written tenancy agreement between the parties. It confirmed the month-to-month tenancy began on February 1, 2016. Rent in the amount of \$1,200.00 per month is due on the first day of each month. The Tenants paid a security deposit of \$600.00, which the Landlord holds. According to the Landlord, the Tenants have been repeatedly late paying rent. Submitted with the Landlord's documentary evidence was a letter, dated August 10, 2016, which stated:

*AS PER TENANT AGREEMENT, ANDN OUR VERBAL  
COMMUNICATION i ADVISED YOU THAT RENT IS DUE ON FIRST OF  
EVERY MONTH.*

*I HAVE PERSISTENTLY RECEIVED RENT LATE AND THIS MONTH  
AUGUST 10, 2016.*

[Reproduced as written.]

The Landlord also submitted a number of recent rent payment receipts, dated December 3, 2016 (\$1,200.00), January 2, 2017 (\$480.00), January 4, 2017 (\$720.00),

and February 2, 2017 (\$1,200.00). As a result of these and other late payments, the Landlord issued the One Month Notice. A copy of the One Month Notice was submitted with the Landlord's documentary evidence. According to the Landlord, the One Month Notice was served on the Tenants, in person, on April 29, 2017.

In reply, the Tenants acknowledged late payment of rent in August and December 2016, and in January and February, 2017. They testified that they understand rent is due on the first day of the month but have paid rent late on a number of occasions due to pay issues, delays in payment of employment insurance benefits, and other obligations such as vehicle insurance. The Tenants also noted that the Landlord has no documentary evidence of late payments before August 2016 because the Landlord did not issue receipts at that time.

### Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. Section 47(1)(b) of the *Act* permits a landlord to end a tenancy where the tenant is repeatedly late paying rent.

Policy Guideline #38 provides clarification with respect to ending a tenancy on the basis of repeated late payments 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...*

...

*Whether the landlord was inconvenienced or suffered damage as a result of any of the late payments is not a relevant factor in the operation of this provision.*

[Reproduced as written.]

The Landlord provided documentary evidence confirming late payments of rent in August and December 2016, and January and February 2017. The Tenants acknowledged these late payments. In addition, the Landlord provided documentary evidence suggesting the Tenants also made late rent payments before August 2016, although the Tenants advised there was no documentary evidence of this. I find it more likely than not that the letter, dated August 10, 2016, was written because of previous late rent payments. Late payments were the sole subject of the letter. I find the Tenants have paid rent late on no less than four occasions since August 1, 2016.

In light of the above, I find that the One Month Notice is upheld and the Tenants' Application, subject to the exercise of my discretion under *Preliminary and Procedural Matters*, above, is dismissed.

When a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the *Act*, section 55 of the *Act* requires that I grant an order of possession to a landlord. As I have dismissed the Tenant's Application and determined the One Month Notice complied with section 52 of the *Act*, I grant the Landlord an order of possession. The Order will be effective on May 31, 2017, the effective date of the One Month Notice, at 1:00 p.m.

### Conclusion

The Landlord is granted an order of possession, which will be effective May 31, 2017, at 1:00 p.m. The order of possession may be filed in 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: May 18, 2017

---

Residential Tenancy Branch