



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, received at the Residential Tenancy Branch on August 8, 2017 (the "Application"). The Tenant applied for an order cancelling a One Month Notice to End Tenancy for Cause, dated July 28, 2017 (the "One Month Notice"), pursuant to the *Residential Tenancy Act* (the "Act").

The Tenant attended the hearing on her own behalf. The Landlord was represented at the hearing by T.A., an agent. Both in attendance provided a solemn affirmation.

The Tenant testified that the Application package was served on the Landlord's agent, T.A., in person, on August 8, 2017. T.A. confirmed receipt. I find the Tenant's Application package was received by the Landlord on August 8, 2017.

The Tenant further testified that she served a documentary evidence package on the Landlord by registered mail on October 18, 2017. The Landlord acknowledged receipt on October 24, 2017, but testified she had not had a full opportunity to review and consider it. As the evidence was not submitted to the Residential Tenancy Branch or served on the Landlord in accordance with Rule of Procedure 3.14, and the Landlord did not have an opportunity to review and consider it, I decline to consider the Tenant's documentary evidence.

On behalf of the Landlord, T.A. testified the Landlord's documentary evidence as served on the Tenant by registered mail on October 11, 2017. The Tenant acknowledged receipt.

No further issues were raised with respect to service or receipt of the above documents. The parties were provided the 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.

### Background and Evidence

The parties agreed the tenancy began on March 1, 2016. Currently, rent in the amount of \$823.00 per month is due on the first day of the month, although rent is subsidized and the Tenant pays only \$476.00 per month. The Tenant paid a security deposit in the amount of \$411.50, which the Landlord holds.

On behalf of the Landlord, T.A. testified the Tenant has been repeatedly late paying rent. She testified the Tenant paid rent as follows:

<b>Month</b>	<b>Payment date</b>
March 2016	March 14, 2016
June 2016	June 7, 2016
July 2016	After July 6, 2016
August 2016	August 6, 2016
October 2016	October 6, 2016
December 2016	December 5, 2016
March 2017	March 8, 2017

Documentary evidence submitted by the Landlord confirmed the above late payments. Accordingly, the Landlord issued the One Month Notice. The Tenant acknowledged receipt on July 28, 2017.

In reply, the Tenant acknowledged the late payments but indicated she has been better as of late.

In light of my findings below, it has not been necessary for me to consider the other bases for ending the tenancy.

### 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* stipulates that a tenant must pay rent when due under the tenancy agreement, whether or not the Landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant is repeatedly late paying rent, section 47(1)(b) confirms a landlord can end the tenancy.

Residential Tenancy Branch 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.]

In this case, the Landlord provided testimony that the Tenant has paid rent repeatedly since the tenancy began. The Tenant acknowledged the late payments. I find the Tenant has been late paying rent on seven occasions since the tenancy began. Accordingly, I find the Landlord had sufficient cause to end the tenancy. The Tenant's Application is dismissed, without leave to reapply.

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 issue an order of possession in favour of the Landlord. Having reviewed the One Month Notice, I find it complies with section 52 of the *Act*. Accordingly, I grant the Landlord an order of possession, which will be effective two (2) days after service on the Tenant.

### Conclusion

The Tenant's Application is dismissed, without leave to reapply. Pursuant to section 55 of the *Act*, the Landlord is granted an order of possession, which will be effective two (2) day after service on the Tenant. 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: October 25, 2017

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Residential Tenancy Branch