



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, FF

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties agreed that the tenant served the landlord with the notice of hearing package via courier. The tenant did not submit any documentary evidence. The landlord provided affirmed testimony that the tenant was served with her submitted documentary evidence via Canada Post Registered Mail on September 19, 2017. The tenant disputed that no such evidence was received. The landlord provided the Canada Post Customer Receipt Tracking number in her direct testimony as confirmation of service. Both parties agreed to allow the Arbitrator to do an online search of the Canada Post website to ascertain the status of the landlord's evidence package. The online search revealed that Canada Post had attempted service of the package on September 20, 2017 when a notice card was left for the tenant to pick up the package. A final attempt was made by Canada Post to deliver the package on September 25, 2017 when a final notice was left cautioning the tenant that the package would be returned to the sender if not picked up. As such, I find that the landlord's documentary evidence package was properly served as per sections 88 and 89 of the Act. Although the tenant failed to pick up the package, I find that the tenant was sufficiently served and is deemed served as per section 90 of the Act.

### Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 1 Month Notice?  
Are the tenants entitled to a monetary order for recovery of the filing fee?

## Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on October 1, 2016 on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated July 25, 2016. The monthly rent is \$1,650.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$825.00 and a pet damage deposit of \$200.00 were paid.

The tenant seeks an order cancelling the 1 month notice and recovery of the filing fee.

On July 9, 2017, the landlord served the tenant with the 1 Month Notice dated July 9, 2017 by posting it to the rental unit door. The 1 Month Notice sets out an effective end of tenancy date of August 15, 2017 and that it was being given as:

- the tenant is repeatedly late paying rent;
- the tenant has caused extraordinary damage to the unit.

Further details of cause on the 1 month notice state,

- Tenant did not ask to have a dog/puppy on premises and such dog has caused major damage.
  - As per strata warning notice dated June 26, 2017.

The tenant has provided written details which state,

Puppy moved in as gift Dec, 2016- daughter had moved out with ca and 2 pet deposit paid. Wasn't an issue til we let landlord know we couldn't buy (she wants to sell) then two weeks later we had inspection and notice to end tenancy –pics of "damage" to follow.

The landlord has provided undisputed affirmed evidence that the tenant was late paying rent for:

December 2016	Paid December 2, 2016
January 2017	Paid January 3, 2017
March 2017	Paid March 2, 2017
May 2017	Paid May 2, 2017

The tenant confirmed that she was late paying rent as claimed by the landlord.

The landlord claims that the tenant's dog has caused damaged in the backyard landscaping, interior walls, carpet and that there are numerous urine stains and issues that requiring cleaning.

The tenant has confirmed in her direct testimony that the damage caused by the dog in the backyard has now been fixed. The tenant argues that there is no damage to the walls or carpeting.

The landlord has submitted in support of these claims:

Copy of a Strata Management letter dated September 13, 2017 re: back lawn damaged by dog urine and a fine imposed.

### Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

I accept the undisputed evidence of both parties that the landlord served the tenant with the 1 Month Notice dated July 9, 2017 on August 15, 2017. Both parties were cautioned that although the 1 Month Notice displayed an effective end of tenancy of August 15, 2017 that this did not invalidate the notice. The effective end of tenancy date is corrected to September 30, 2017 to allow for 1 months' notice as the payment of rent is due on the 1<sup>st</sup> of each month.

In this case, the tenant has confirmed the landlord's claim that rent was repeatedly paid late as claimed by the landlord noted above on 4 different occasions from December 2016 to May 2017.

Residential Tenancy Branch Policy Guideline #38, Repeated Late Payment of Rent states in part,

The *Residential Tenancy Act*<sup>1</sup> and the *Manufactured Home Park Tenancy Act*<sup>2</sup> both provide 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...

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

As such, I find that the landlord has established a reason for cause as listed on the 1 Month Notice dated July 9, 2017 as the tenant has acknowledged that rent has been paid late on the dates submitted by the landlord. On this basis, the tenant's application

to cancel the 1 Month Notice is dismissed. The 1 Month Notice dated July 9, 2017 is upheld. Pursuant to section 55 of the Act, the landlord is granted an order of possession effective 2 days after service upon the tenant as the effective date of the notice has passed. The remaining reasons for cause do not need to be addressed.

### Conclusion

The tenant's application is dismissed without leave to reapply.  
The landlord is granted an order of possession.

This order must be served upon the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

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 5, 2017

---

Residential Tenancy Branch