



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes

CNC

### Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for Cause.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the "hearing package") by personal delivery on July 27, 2017. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with all parties in attendance.

### Issues(s) to be Decided

1. Is the Tenant entitled to an Order to cancel the Notice to End Tenancy?

### Background and Evidence

This tenancy started on October 16, 2012 as a fixed term tenancy and then renewed at the end of the fix term to a month to month tenancy. Rent is \$906.29 per month payable on the 1<sup>st</sup> day of each month. The Tenant did not paid a security deposit.

The Landlord said she issued the 1 Month Notices to End Tenancy for Cause dated July 12, 2017 to the Tenant by personal delivery on July 12, 2017. As well a second 1 Month Notice to End Tenancy for Cause dated July 18, 2017 was served in person on July 18, 2017. The Landlord said the reason she issued the second 1 Month Notice to End Tenancy for Cause was because the effective vacancy date on the first notice was August 16, 2017 which was incorrect so the second Notice to End Tenancy was issued with an effective vacancy date of August 31, 2017.

The Landlord continue to say the reason on the 1 Month Notice to End Tenancy for Cause is repeated late rent payments. The Landlord said the Tenant was late with the March, April, May, June and July, 2017 rent payments. The Landlord submitted into evidence rent arrears letters sent to the Tenant for each month the Tenant had unpaid rent. The Landlord said that the Tenant was short \$25.54 on the rent payment which was the annual rent increase in November, 2016. Further the Landlord said the Tenant has paid all the unpaid rent at the present time and she issued receipts for the unpaid rent on July 11, 2017 and August 2, 2017 indicating the payments were for "use and occupancy only." The Landlord said the Tenant has been late with

the rent payment more than three times which qualifies for a 1 Month Notice to End Tenancy for Cause. The Landlord said she wants to end the tenancy and requested an Order of Possession to end the tenancy within the next 2 months.

The Tenant's daughter E.S. said she was acting for her father. The Tenant's agent E.S. said the tenancy started in October, 2012 and there has been no issues with the rent payment until this incident. E.S. said the Tenant's case worker at BC Housing had handled all rent increases in the past so her father was unaware how the process worked. E.S. continued to say the Tenant's case worker changed jobs and a new case worker was not assigned to her father. As a result when the rent increase of \$25.54 came into affect in November, 2016, her father had not processed the form work and was not aware that the rent subsidy had not been changed to reflect the rent increase. In addition there was a credit on the Tenant's rental account so no unpaid rent appeared until March, 2017. E.S. said her father thought the rent was taken care of and because he has mental health issues which impair his understanding of financial issues he was not aware of the situation.

The Tenant said he thought the rent was being paid correctly as no arrears came up in November, 2016 when the rent increased. Further the Tenant said he did not receive all of the rent arrears letters that the Landlord is referring to. The Tenant continued to say he paid the unpaid rent and contacted BC Housing about the problem but it took until June, 2017 to correct the problem. The Tenant submitted a letter dated June 8, 2017 from BC Housing approving the rent subsidy increase.

The Tenant's Advocate L.L. said that this situation is a result of lack of communication. The Tenant did not understand why the full rent was not being paid as there was no rent arrears from November, 2016 through to February, 2017. The Advocate said the Landlord did not provided rent payment receipts so how could the Tenant know that the BC Housing rent payment had not been adjusted for the rent increase of November, 2016. The Advocate continued to say when the Tenant understood the problem he paid the unpaid rent and started the process with BC Housing to adjust there part of the rent payment. The Advocate said this was a slow process partially because the Tenant did not know what to do and partial because there were a number of government departments to deal with. The Advocate said this is a very unfortunate situation caused by circumstances not by the Tenant trying not to pay the rent or being neglectful of the situation.

The Landlord responded that the Tenant had unpaid rent for 5 months and it is the Tenant's responsibility to make sure the rent is paid on time. The Landlord said it is not the Landlord's responsibility to contact government agencies about rent increases or rent payments. The Landlord said the Tenant was late with the rent payment more than three times and that is grounds to end the tenancy. The Landlord said they want to end the tenancy.

The Tenant said in closing that he did everything he could, that he has been a good tenant for 5 years with no problems and he corrected the situation so that now the rent is being paid on time and in full. The Tenant said he wants to continue the tenancy because if he losses his rent subsidy he will be on the street.

The Tenant's Advocate L.L. said much of this situation is due to third party agencies inaction or miscommunication.

The Landlord said in closing that they made the Tenant aware of the problem in March, 2017 and communicated many times with him to deal with it, but the problem was not resolved until August, 2017. The Landlord submitted 13 arrears letters that were posted on the Tenant's door from April 4, 2017 to July 10, 2017. The Landlord requested an Order of Possession within 2 months of today's date.

### Analysis

**Section 26(1)** of the Act says 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.

As well: **Section 47** of the Act says a landlord may end a tenancy by giving notice to end tenancy if one or more of the following:

(b) **the tenant is repeatedly late paying the rent**

(c) there are an unreasonable number of occupants in the rental unit

(h) the tenant has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable time after receiving written notice from the landlord.

(i) the tenant purports to have assigned or sublet the unit without the landlord's written consent.

#### Policy Guideline #38:

The Residential Tenancy Act and the Manufactured Home Park Tenancy Act 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. 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

A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.

In exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.

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.

The Tenant does not have the right to withhold all or a portion of the rent from the Landlord when it is due. The Tenant has been late with the full rent payment for the months of March, April, May June and July, 2017. I understand the Tenant believed the Ministry or Housing BC normally handled any rent increases for him and that he has now paid the rent arrears and corrected the situation. As well it is regrettable that the Tenant's case worker is no longer working with him and the Tenant believes this is partially the cause of this situation. The Act is clear that if a tenant is repeatedly late with the rent payment three or more times and if the landlord takes action to inform the tenant of the unpaid rent then the landlord is entitled to serve the tenant a 1 Month Notice to End Tenancy for Cause.

The Landlord said she posted rent arrears letters on the Tenant's door on April 19, April 25, May 3, May 9, May 16, May 24, May 30, June 6, June 13, June 20, June 27, July 4, and July 10, 2017. The Landlord submitted these letters in to evidence and I accept the Landlord testimony that she posted these letters on the Tenant's door. In addition the Landlord wrote notes on the letters explaining the situation and asking the Tenant to come to the office to pay the unpaid rent. Further the Landlord issued a 10 Day Notice to end Tenancy for unpaid rent on July 2, 2017 and a 1 Month Notice to End Tenancy for Cause on July 12 and July 18, 2017. The Landlord communicated to the Tenant the unpaid rent issue and the Landlord took the appropriate action in this situation.

The Tenant and his Advocates said this is a situation with exceptional circumstances. First the Tenant has mental health issues which impact the Tenant's ability to deal with financial issues. Secondly the Tenant has lived in this rental unit for 5 years without incident and the rent has always been paid on time. Thirdly the Tenant has relied on the Ministry and BC housing to manage his rent payments and the annual rent increases. The rent increase notice dated July 12, 2016 for November 1, 2016 was not dealt with and resulted in the Tenant having unpaid rent until the rent increase form was process. The Tenant's Advocate said the Tenant had no control over this so this should be consisted an exceptional circumstance. The Tenant and his Advocates requested that the tenancy continue and the 1 Month Notice to End Tenancy for Cause be cancelled.

I have reviewed the evidence and testimony and I understand the Tenant's position that he and his support systems did not deal with the annual rent increase dated July 12, 2016 with the effective date of November 1, 2016 as in previous years. This is regrettable. Further as the rent arrears have been paid and the November, 2017 annual rent increase has been process I would encourage the Landlord to reconsider their position of ending the tenancy. The Tenant did communicate poorly and there was a time lag before the rent payment amount was corrected but it is corrected. Further it appears from the testimony of both the Landlord and the

Tenant that this is the only incident in this tenancy over the last five years which I believe deserves some consideration.

Repeated late payments of rent that are not corrected after receiving a written request to pay the rent on time is a material breach of the tenancy agreement. The Tenant received multiple requests to correct the situation and paid the unpaid rent. The Tenant allowed the rent arrears and late rent payments to continue for 5 months. Further the Tenant and his Advocates have put forward this is an exception circumstance in which third parties which the Tenant has no control over contributed to the problem. I find no evidence to indicate the Tenant submitted the rent increase form dated July 12, 2016 to the government agencies in a timely manner so that the rent subsidy could be reviewed and adjusted. If the Tenant did not make the appropriate application for an increased rent subsidy then the responsibility for the unpaid rent is solely the Tenant's. I find this is not an exceptional circumstance, the Tenant and his support system received the Rent Increase Notice and did not deal with it properly.

Consequently as there is no evidence to show the Tenant filed for the rent increase prior to November 1, 2016 and there is 5 months of late rent payments; I find the Tenant has not established grounds to cancel the 1Month Notice to End Tenancy for Cause due to repeatedly late rent payment. I dismiss the Tenant's application to cancel the 1 Month Notice to End Tenancy Cause dated July 18, 2017.

The Landlord's 1 Month Notice to End Tenancy for Cause dated July 18, 2017 stands in effect. I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect December 31, 2017.

### Conclusion

An Order of Possession effective at 1:00 p.m. on December 31, 2017 has been issued to the Landlord. A copy of the Order must be served on the Tenant: the Order of Possession may be enforced in the Supreme Court of British Columbia.

The Tenant's application is dismissed without leave to reapply.

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 18, 2017

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Residential Tenancy Branch