



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNE

### Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking to cancel a One Month Notice to End Tenancy for End of Employment. The hearing was convened by telephone conference call and was attended by the Tenant, the Witness for the Tenant, the Landlords and the agent for the Landlords (the “Agent”), all of who provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Agent and Landlord testified that the Landlord received the Tenant’s evidence and that the Landlord’s evidence was personally served on the Tenant on October 26, 2017, in accordance with the *Act* and the Rules of Procedure; however, the Tenant denied ever receiving the Landlord’s evidence and requested that it be excluded from the hearing. No Witness was produced in support of the Landlord’s testimony.

Rule 3.15 of the Rules of Procedure states that the Respondent must ensure evidence that they intend to rely on at the hearing is served on the Applicant and submitted to the Branch as soon as possible and in any event, must be received by the Applicant and the Branch not less than seven days before the hearing. Rule 3.17 of the Rules of Procedure states that evidence not provided to the other party and the Branch may not be considered, and that the arbitrator has the discretion to determine whether to accept the evidence provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.

Based on the evidence before me, I am not satisfied that the evidence for the Landlord was exchanged in accordance with the Rules of Procedure or received by the Tenant prior to the hearing. Therefore I find that it would be a breach of the Rules of Procedure and the principles of natural justice to consider this documentary evidence in the hearing and I have excluded it from consideration accordingly.

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

### Preliminary Matters

The Tenant filed an Application seeking to cancel a One Month Notice to End Tenancy for End of Employment; however, no Notice to End Tenancy for this purpose was received by the Residential Tenancy Branch (the “Branch”). In the hearing the Tenant acknowledged that this was a clerical error as they intended to dispute a One Month Notice to End Tenancy for Cause and requested to amend their Application accordingly. As neither party had any objections and the Notice to End Tenancy for Cause was submitted with the original Application, the Application was amended.

An Amendment to an Application for Dispute Resolution (the “Amendment”) was received by the Branch on October 25, 2017. The Amendment stated that a new One Month Notice to End Tenancy and a new 10 Day Notice to End Tenancy for Unpaid Rent or Utilities had been received, which the Tenant also wished to dispute. The Tenant testified that the Amendment and related evidence was personally served on the Landlord on October 26, 2017, and the Landlord confirmed receipt of these documents. As the Amendment was received by the Landlord and the Branch at least 14 days prior to the hearing in accordance with rule 4.6 of the Rules of Procedure, the Application was amended.

### Issue(s) to be Decided

Is there a valid reason to cancel the One Month Notice under the Act?

Is there a valid reason to cancel the 10 Day Notice under the Act?

If the Tenant is not successful in seeking to cancel either the One Month Notice or the 10 Day Notice, is the Landlord entitled to an Order of Possession pursuant to section 55 of the Act?

### Background and Evidence

Although significant evidence and testimony was provided by both parties in relation to both the 10 Day Notice and the One Month Notice, only the evidence and testimony relevant to my decision has been summarized below.

The tenancy agreement submitted by the Tenant indicates that the five year fixed-term tenancy began on September 1, 2014, and that rent in the amount of \$2,000.00 is due on the first day of each month. The parties agreed that these are the correct terms of the tenancy agreement.

The Agent and Landlord testified that several Notices to End Tenancy were served on the Tenant; one of which was the One Month Notice to End Tenancy for Cause (the "One Month Notice"), dated September 1, 2017, which was submitted by the Tenant and has "2<sup>nd</sup> Notice served Oct 24" handwritten across the top. The Tenant testified that this One Month Notice was served on them on October 24, 2017.

The One Month Notice, dated September 1, 2017, has an effective vacancy date of October 15, 2017, and indicates the following reasons for ending the tenancy:

- The Tenant is repeatedly late paying rent;
- The Tenant has allowed an unreasonable number of occupants in the unit/site;
- The Tenant or a person permitted on the residential property by the Tenant has put the Landlord's property at significant risk;
- The Tenant or a person permitted on the residential property by the Tenant has caused extraordinary damage to a rental unit or residential property; and
- The Tenant has assigned or sublet the rental unit/site without the Landlord's written consent.

Conflicting testimony was provided by both parties regarding the payment of rent; however, the Tenant and their witness both testified that the Tenant did not pay the rent on October 1, 2017, as the Landlord refused to give them a rent receipt for the cash payment, or to provide them with rent receipts for their cash payments over the previous year.

Further to this, in the documentary evidence provided by the Tenant there is a handwritten account of when money was withdrawn by the Tenant from their bank account in order to pay the rent. This account covers the period from September 1, 2015, – September 1, 2017, and indicates that rent was withdrawn after the first of the month on the following dates: January 3, 2017, and April 3, 2017. When

asked, the Tenant testified that these dates were correct and that cash was withdrawn by them on these dates in order to pay the rent. The Tenant testified that they did not pay the rent on the first of the month on these two occasions as the Landlord only accepted cash and the bank was closed on the first of these months, which was on a weekend.

### Analysis

I have reviewed all relevant documentary evidence and oral testimony and in accordance with section 88 of the *Act*, I find that the Tenant was served with the One Month Notice on October 24, 2017, the date they acknowledge receiving it.

Section 26 states the following with regards to the payment of rent:

### **Rules about payment and non-payment of rent**

- 26** (1) 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.
- (2) A landlord must provide a tenant with a receipt for rent paid in cash.

Although section 26(2) of the *Act* states that a landlord must provide a receipt for rent paid in cash, section 26(1) clearly states that rent must be paid when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. As a result of the above and pursuant to the tenancy agreement submitted by the Tenant, I find that the Tenant was obligated to pay rent in the amount of \$2,000.00 on or before the first day of each month, regardless of whether the Landlord provided a rent receipt.

Section 47 of the *Act* states a landlord may end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent. The Residential Tenancy Branch Policy Guidelines (the "Policy Guidelines") state under section 38 that three late payments are the minimum number sufficient to justify a Notice to End Tenancy pursuant to section 47 of the *Act*, and that it does not matter whether the late payments are consecutive or whether one or more rent payments have been made on time between the late payments. Although the Tenant testified that they could not pay the rent on the first of the month on at least two occasions as the bank was closed that day and the Landlord required cash payments, as stated above, section 26 of the *Act* requires that tenants pay the rent when due under the tenancy agreement. As a result, I find that it was the Tenants responsibility to ensure that they were able to pay the rent

on time and in full as required in the tenancy agreement, regardless of operating hours of their bank.

Based on the documentary evidence and testimony before me, I am satisfied that the Tenant paid the rent late in January, April, and October of 2017. As this is at least three times in the last 10 months, I find that the Landlord had sufficient grounds to issue the One Month Notice under the *Act* and the Tenant's Application to cancel the One Month Notice is therefore dismissed.

I note that Section 55 of the *Act* requires that when a tenant submits an Application seeking to cancel a Notice to End Tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with Section 52 of the *Act*.

As the One Month Notice is in writing, is signed and dated by the Landlord, gives the address of the rental unit, gives the effective date of the One Month Notice, states the reasons for ending the tenancy, and is in the approved form, I find that it complies with section 52 of the *Act*. As a result, I find that the Landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*.

I have already found above that the Tenant was served the One Month Notice on October 24, 2017; however, the effective date stated in the One Month Notice is October 15, 2017. Section 47(2) of the *Act* states that a notice under this section must end the tenancy effective on a date that is not earlier than one month after the date the notice is received, and the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 53 of the *Act* states that if a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this section, the effective date of the notice is deemed to be changed to the earliest date that complies with the section. As a result, I find that the effective date of the One Month Notice is automatically changed under the *Act* to November 30, 2017, and the Landlord is therefore entitled to an Order of Possession at 1:00 P.M. on that date.

As I have already found above that the tenancy is ended for repeated late payment of rent, I make no findings of fact or law regarding the 10 Day Notice or the other causes identified in the One Month Notice.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **1:00 P.M. on November 30, 2017, after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

At the request of the Tenant, a copy of the decision will be mailed to their address as listed on the Application. At the request of the Landlord, copies of the decision and order will be mailed to their address as listed on the Application and e-mailed to their Agent at the address they provided in the hearing.

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: November 16, 2017

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Residential Tenancy Branch