



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing dealt with the tenant's 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.

Both parties confirmed that the tenant served the landlord with the notice of hearing package by posting it to the landlord's door. Neither party raised any issues with service. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence, I am sufficiently satisfied that both parties have been deemed served as per section 90 of the Act.

### Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 Month Notice?

### 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 a month-to-month basis with a monthly rent of \$690.00 payable each month. Later due to a notice of rent increase on February 1, 2017 the rent became \$715.00.

The landlord claims that the payment of rent is due on “2<sup>nd</sup> last day of previous mo.” The tenant disputes this stating that her understanding is that rent is due on the 1<sup>st</sup> day of each month. A review of the signed tenancy agreement in section 6 Rent states,

The tenant will pay rent of \$690 subject to rent increases given in accordance with the Residential Tenancy Act and will pay rent per month by Cash. Rent is due on 2<sup>nd</sup> last day of Previous Mo. Of the rental period which falls on the 1<sup>st</sup> day of each month and is payable to...

[Reproduced as written]

In reviewing this section drafted by the landlord that the payment of rent is ambiguous. The payment of rent cannot be on the 2<sup>nd</sup> last day of the previous month and on the 1<sup>st</sup> day of each month. The landlord confirmed that the agreement was drafted by the landlord. Either claim could be valid, however in this case the landlord relies upon his interpretation that rent is due on the 2<sup>nd</sup> last day of the previous month as opposed to the tenant's claim that rent is due on the 1<sup>st</sup> day of each month. In finding that either claim is possible, I side with the interpretation of the tenant over that of the landlord and find that rent is due on the 1<sup>st</sup> day of each month.

On November 28, 2017, the landlord served the tenant with the 1 Month Notice. The 1 Month Notice sets out an effective end of tenancy date of December 31, 2017 and that it was being given as:

- the tenant is repeatedly late paying rent.

The details of dispute state,

“Rent late 18 times/24 times due. 18/24 late”.

The landlord claims that the tenant has been repeatedly late paying rent on the following occasions.

July 2017	Rent Paid on July 17, 2017
August 2017	Rent Paid on August 23, 2017
October 2017	Rent Paid on October 4, 2017
November 2017	Rent Paid on November 3, 2017

The tenant confirmed in her direct testimony that she was late paying on the above noted occasions as claimed by the landlord.

The landlord also claimed that the tenant has been repeatedly late paying rent as far back as November 2015 when rent was paid on November 5, 2015. The landlord stated that the tenant has been late paying rent 18/24 last rent payments.

The tenant argued that the landlord accepted that rent would be paid late as shown in the landlord's own claims beginning November 2015 and that no warnings were given that late rent was an issue. The landlord disputes this stating that he has been trying to work with the tenant, but that the late payment of rent was an issue. The landlord has referred to the landlord's documentary submissions "Doc #4 Notes of meeting August 31, 2016" which shows that handwritten notation was made during a meeting on August 31, 2016 where one of the issues was for the tenant to "Pay on time". The tenant confirmed in her direct testimony that during the meeting all three listed "content" issues were spoken to. In the notation, it states, "Result: she agrees to 1. Pay on time."

### 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.

Both parties confirmed that the landlord served the tenant with the 1 Month Notice dated November 28, 2017 by posting it to the rental unit door on November 28, 2017. No further issues were raised concerning the 1 Month Notice.

Section 47(1)(b) of the Act permits a landlord to terminate a tenancy by issuing a 1 Month Notice in cases where a tenant has been repeatedly late paying rent.

I find based upon the undisputed affirmed testimony of both parties that the landlord has established a claim that the tenant has been repeatedly late paying rent on at least 4 occasions between July 2017 and November 2017 as claimed above.

Residential Tenancy Branch Policy Guideline #38 speaks to Repeated Late Payment of Rent and states in part that a landlord may end a tenancy where a tenant is repeated 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.

Although the tenant has claimed that the landlord accepted the practice of late payments of rent this is contradicted by the landlord's documentary evidence in the form of the notation dated August 31, 2016 where both parties discussed issues, one of which is to "pay on time" the rent. The tenant confirmed the meeting and the agreement made.

As such, I find that the landlord has provided sufficient evidence of repeated late payments of rent. The tenant's application to cancel the 1 Month Notice dated November 28, 2017 dismissed. The 1 Month Notice is upheld. Pursuant to section 55 of the Act, the landlord is granted an order of possession effective two days after service upon the tenant as the effective date of the notice has now passed.

### Conclusion

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

The landlord must serve the tenant with the order of possession. 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: February 20, 2018

---

Residential Tenancy Branch