



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNC, OLC

### **Introduction:**

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the one month Notice to End Tenancy dated January 3, 2018
- b. An order that the landlord comply with the Act, Regulations and/or tenancy agreement.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the one month Notice to End Tenancy was served on the Tenant by posting on January 3, 2018. Further I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on or after January 31, 2018. With respect to each of the applicant's claims I find as follows:

### **Issues to be Decided:**

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the one may Notice to End Tenancy dated January 3, 2018?
- b. Whether the tenant is entitled to an order that the landlord comply with the Act, Regulations and/or tenancy agreement?

### **Background and Evidence:**

The tenancy began on September 1, 2012. The present rent is \$854 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$370 at the start of the tenancy.

The landlord testified the rent was paid late and a 10 day Notice to End Tenancy was issued for the following months:

- January 2018
- December 2017

- October 2017
- September 2017
- July 2017.

The landlord issued a warning letter about the late payment of rent in November 2017.

The tenant does not dispute the late payments. She testified she was overseas in April and was not able to obtain full time employment when she returned. However, she has now obtained full time employment and she will be able to pay the rent in full when due. She seeks a second chance. She further testified she paid the rent including the late fee for all of these late payments.

The landlord stated his boss has told him to seek an Order of Possession as quickly as possible as they are no longer prepared to give the tenant a second chance.

Grounds for Termination:

The Notice to End Tenancy relies on the following grounds:

- Tenant is repeatedly late paying rent

Policy Guideline #38 provides as follows:

“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. 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.”

Determination and Orders:

After carefully considering all of the evidence I determined that the landlord has established sufficient cause to end the tenancy. There have been 5 late payments that gave rise to the landlord issuing a Notice to End Tenancy in the last year. The tenant was warned about the consequence of continued late payment. As a result I dismissed the tenant's application to cancel the Notice to End Tenancy. I order that the tenancy shall end. I dismissed the tenant's application that the landlord comply with the Act, Regulations and/or tenancy agreement.

Order for Possession:

The Residential Tenancy Act provides that where an arbitrator has dismissed a tenant's application to cancel a Notice to End Tenancy, the arbitrator must grant an Order for Possession. As a result I granted the landlord an Order for Possession on 2 days notice.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

The tenant represented that she could pay the rent for April today if she was permitted to remain in the rental unit.

**The landlord agreed that provided the tenant paid the April rent in full on March 28, 2018 the landlord would accept the payment for "use and occupation rent for April" and would not exercise its rights under the Order of Possession until April 30, 2018 if the tenant had not vacated by that time. However, if the tenant failed to pay the rent for April today, the landlord would be free to exercise its rights under the Order of Possession on 2 days notice in accordance with the terms of the Order of Possession.**

**This decision is final and binding on the parties..**

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: March 28, 2018

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Residential Tenancy Branch