



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Affordable Housing Advisory Association  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      Tenant: CNR MT FF  
Landlord: OPR OPC

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on April 16, 2018. Both parties applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the “Act”).

The Landlord and the Tenant both attended the hearing. All parties provided testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The Landlord confirmed receipt of the Tenant’s documentary evidence and Notice of Hearing package.

The Landlord stated that he served the Tenant with his Application and evidence by registered mail on February 23, 2018 (sent to the rental unit). The Landlord also sent the Amendment by registered mail on March 21, 2018. Although the Tenant stated he did not pick up any of the registered mail packages, I find the Landlord has sufficiently served his application, amendment, and evidence to the Tenant. Pursuant to section 88, 89 and 90 of the Act, I find the Tenant is deemed to have received the first application and evidence package on February 28, 2018, and the second package on March 26, 2018, the fifth day after their registered mailing. I note that failure to pick up registered mail is not a ground for review.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Tenant allowed more time to make an application to cancel the 10-Day Notice?
2. Is the Tenant entitled to have the 10-Day Notice cancelled?
3. Is the Landlord entitled to an order of possession for unpaid rent or utilities or based on a 1-Month Notice for Cause (1 Month Notice)?

Background and Evidence

Both parties provided testimony during the hearing with regards several different 10 Day Notices (for Non-payment of rent) as well as issues surrounding the 1 Month Notice for Cause. However, in this review, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine whether or not the tenancy will continue or end. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings. Given that my decision hinges on the 1 Month Notice, I will focus on this evidence.

Both parties agree that monthly rent is \$1,280.00, and is due on the first of the month. As per the tenancy agreement provided into evidence, the Landlord holds a security deposit in the amount of \$537.50. The Landlord stated that the Tenant has paid rent late 18 or 19 times since the tenancy began in 2010, and at least 3 times in the last year. As a result, the Landlord stated that he has warned the Tenant multiple times but things haven't changed. The Landlord stated that he served the 1 Month Notice by registered mail. The Landlord stated that he sent the 1 Month Notice by registered mail on February 5, 2018. The Tenant stated that he did not go and pick up any of the registered mail sent to him. The Landlord issued the 1 Month Notice for repeated late payment of rent.

The Tenant acknowledged that he has paid rent late many times over the years, and agreed that it has likely been 18-20 times, as the Landlord has stated. The Tenant stated that he is waiting for a large lawsuit to be settled and he will be in a better financial position once that has happened. The Tenant stated that he will pay closer attention to paying rent on time in the future and would like to stay in the unit if he could. The Landlord stated that he wants an order of possession and is tired of rent being paid late.

The Landlord also provided multiple different 10 Day Notices and documentary evidence showing that rent has been late many times over the years.

### Analysis

Based on the testimony and documentary evidence, and on a balance of probabilities, I find:

Section 47 of the *Act* permits a landlord to end a tenancy for cause. A tenant who receives, or is deemed to have received, a notice to end tenancy for cause has 10 days after receipt to dispute it by making an application for dispute resolution. Failure to dispute the notice to end tenancy for cause in this period results in the conclusive presumption that the tenant has accepted the end of the tenancy.

In this case, the Landlord issued the 1 Month Notice for cause due to repeated late payment of rent. The Landlord stated, and provided a proof of service document to show that he sent the 1 Month Notice by registered mail to the rental unit on February 5, 2018. Although the Tenant did not go and pick up the package, pursuant to section 88, 89, and 90 of the *Act*, I find this package is deemed served 5 days after its registered mailing, on February 10, 2018.

The Tenant had 10 days, until February 20, 2018, to dispute the 1 Month Notice, but did not do so. Accordingly, pursuant to section 47(5) of the *Act*, I find the Tenant is conclusively presumed to have accepted the end of the tenancy.

The Landlord is entitled to an order of possession, which will be effective on April 30, 2018, at 1:00 p.m.

Given my findings on this matter, it is not necessary for me to consider the remaining issues, as the tenancy is over.

As the Landlord's application was successful, and pursuant to section 72 of the *Act* I grant the Landlord the recovery of the cost of the filing fee in the amount of \$100.00. I authorize the Landlord to retain \$100.00 from the Tenant's \$537.50 security deposit in full satisfaction of the recovery of the cost of the filing fee, which I find leaves a security deposit balance of \$437.50.

### Conclusion

The landlord is granted an order of possession effective **April 30, 2018**, at 1:00 p.m. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be 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: April 17, 2018

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Residential Tenancy Branch