



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding COMMUNITY BUILDERS GROUP  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

On April 25, 2018, the Tenant applied for a dispute resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the "Notice") pursuant to section 47 of the Act.

At the start of the hearing, I confirmed that the Tenant attended the hearing on his own behalf, and that D.D. was present as an Advocate for him. I also confirmed that M.C. and R.S. attended the hearing and they advised that they were agents for the Landlord. All in attendance provided a solemn affirmation.

The Tenant confirmed that he served the Landlord the Notice of Hearing package by registered mail on April 27, 2018 and M.C. confirmed receipt of this package. Based on this oral testimony, and in accordance with sections 89 and 90 of the Act, I am satisfied that the Landlord was served with the Notice of Hearing package.

D.D. advised that she faxed their evidence to the Landlord at the fax number provided on the Notice and that she had a fax confirmation. M.C. confirmed the fax number but stated that he did not receive this evidence package. However, as the Tenant's evidence were documents that the Landlord was already aware of, I determined that it was not prejudicial to the Landlord to proceed with the hearing even though he had not received this evidence. The Tenant confirmed receipt of the Landlord's evidence that was posted to his door on May 14, 2018. As such, I have accepted and considered all the written submissions before me.

I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?

Background and Evidence

M.C. stated that the tenancy started on July 3, 2015 as a fixed term tenancy for a term of six months. Rent was established at \$550.00 per month, due on the first day of each month. A security deposit of \$275.00 was also paid. The Tenant advised that half the rent was initially paid by the Landlord in lieu of work; however, it was agreed that this arrangement ended and the Tenant was solely responsible for rent starting in September 2016.

R.S. testified that the Notice was posted to the Tenant's door on April 17, 2018 and the reason for the Notice being issued was due to repeated late payment of rent. R.S. then advised that she made a mistake in the attached monetary order worksheet, so she served another identical Notice on April 20, 2018 by posting to the Tenant's door. Records indicate that the Tenant applied to dispute the first Notice and advised that he did not dispute the second Notice as it was identical. As R.S. submitted that the reason for the Notice was due to the same issue and it was merely to correct a mistake, I find that the application to cancel the Notice will apply to both Notices served.

M.C. advised that he has a record of the Tenant paying rent late repeatedly and since July 2017, the dates for those late payments were as follows:

<b>Date of Payment</b>
July 13, 2017
August 3 and August 29, 2017
Four payments for September rent with the last one on October 16, 2017
Three payments for October rent with the last one on October 27, 2017
Partial payment for November rent on October 27, 2017

The Tenant stated that he had been working with the Landlord regarding his late rent in the past and was never informed that this was an issue. He stated that he has been paying rent for the last six months and does not understand why this is a problem now. To support her position that the Tenant has not been repeatedly late paying rent, D.D.

referred to Policy Guideline #38 where it states that “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.” She submitted that the Tenant’s assistance cheques are being processed early and the problems are now fixed.

### Settlement Agreement

I raised the possibility of settlement pursuant to section 63(1) of the *Residential Tenancy Act* (the “Act”) which allows an arbitrator to assist the parties to settle the dispute. I explained to the parties that settlement discussions are voluntary, that if they chose not to discuss settlement I would make a final and binding decision on the matter, and that if they chose to discuss settlement and did not come to an agreement, that I would make a final and binding decision on the matter. I advised the parties that if they did come to an agreement, I would write out this agreement in my written decision and make any necessary orders. I also explained that the written decision would become a final and legally binding agreement. The parties did not have questions about discussing a settlement when asked.

M.C. initially declined to offer a settlement even though D.D. requested a mutual agreement to end the tenancy. However, M.C. then offered to allow the Tenant to stay until June 30, 2018 but the Tenant felt that that did not give him enough time to vacate the rental unit. M.C. then offered to extend this to July 15, 2018 at 3 PM, and after much discussion between the Tenant and D.D., the Tenant agreed to accept M.C.’s offer.

The Landlord and Tenant agreed as follows:

1. The Tenant must pay June rent in full on June 1, 2018.
2. The Tenant must pay half of July rent on July 1, 2018.
3. Provided these conditions are met, the Tenant will have possession of the rental unit but must vacate the rental unit by July 15, 2018 at 3 PM.

If any of the aforementioned conditions are not satisfactorily complied with, the Landlord is granted an Order of Possession effective **two days after service of this Order** on the Tenant.

This settlement agreement was reached in accordance with section 63 of the Act. The parties confirmed at the end of the hearing that this agreement was made on a

voluntary basis and that the parties understood the binding nature of this full and final settlement of these matters.

### Conclusion

Based on the above, I hereby order that the One Month Notice to End Tenancy for Cause of April 30, 2018 to be cancelled and of no force or effect.

In support of the settlement described above and with agreement of both parties, I grant the Landlord an Order of Possession effective **two days after service on the Tenant**. 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 Order is enforceable only if the Tenant fails to comply with the payment requirements set forth in conditions 1 and 2 of the settlement above, or on July 15, 2018 at 3 PM if the Tenant fails to vacate the property.

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: May 29, 2018

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Residential Tenancy Branch