



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC FF

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on May 22, 2018. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- cancellation of the Landlord's 1 Month Notice to End Tenancy for Cause (the Notice) pursuant to section 47.

The Tenant and the Landlord both attended the hearing and provided testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of each other's documentary evidence.

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

- Is the Tenant entitled to have the Landlord's Notice cancelled?
  - If not, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee for his application?

### Background and Evidence

The Landlord issued the Notice because the Tenant is repeatedly late paying rent. The Tenant acknowledged receipt of the Notice on February 25, 2018. The Landlord stated that the Tenant knows he is supposed to pay rent on the first of the month, but he is frequently late. The Landlord stated that the Tenant now pays by email money transfer,

and provided copies of these email receipts into evidence. Both parties agree that monthly rent is \$1,000.00.

The Landlord stated that she issued a 10 Day Notice on December 3, 2017, indicating that the Tenant failed to pay \$1,000.00 that was due on December 1, 2017. The Landlord provided a copy of the email money transfer she subsequently received from the Tenant on December 4, 2017, in the amount of \$1,000.00.

The Landlord testified that she gave the Tenant another 10 Day Notice on January 2, 2018, indicating that the Tenant failed to pay \$1,000.00 that was due on January 1, 2018. The Landlord provided a copy of the email money transfer she received from the Tenant on January 2, 2018, in the amount of \$1,000.00.

The Landlord testified that she gave the Tenant another 10 Day Notice on February 2, 2018, indicating that the Tenant failed to pay \$1,000.00 that was due on February 1, 2018. The Landlord provided a copy of the email money transfer she received from the Tenant on February 2, 2018, in the amount of \$1,000.00. Later this month, on February 25, 2018, the Landlord served the Tenant with the Notice for repeated late payment of rent.

The Landlord testified that she received rent on time on March 1, 2018, and then it was late again in April 2018.

The Tenant says he is not computer literate, so he has his accountant pay rent via email money transfer. The Tenant stated that rent is always paid "within a very short time period". The Tenant stated that rent is always paid within a couple days of the beginning of the month.

### Analysis

In the matter before me, the Landlord has the onus to prove that the reason in the Notice is valid.

The Landlord entered into written evidence a copy of her **February 25, 2018**, Notice. In that Notice, the Landlord cited the following reason for the issuance of the Notice:

*Tenant is repeatedly late paying rent.*

The Landlord stated that rent has always been due on the first of the month. The Tenant did not refute this information in the hearing and spoke to the fact that he usually pays

rent “within a very short time period”. I note there is no tenancy agreement provided into evidence. However, the Landlord provided numerous 10 Day Notices into evidence indicating that rent is due on the first of the month, and she also directly testified to this in the hearing. The evidence from the Landlord on this point remains undisputed, and I find that rent is due on the first of the month, based on the evidence and the testimony on this matter.

The Landlord provided 3 copies of email money transfers she received late, as specified above. After receiving rent late at least 3 times, she issued the Notice on February 25, 2018. The Landlord has provided more compelling evidence with respect to the timing of rent payments, and I find it more likely than not that the Tenant was late paying rent in December 2017, January 2018, and February 2018.

I turn to the following:

*Residential Tenancy Policy Guideline #38 – Repeated Late Payment of Rent*

*The Residential Tenancy Act and the Manufactured Home Park Tenancy Act 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.*

Given that the Tenant had paid rent late at least 3 times, as specified above, at the time the Notice was issued, I find the Landlord has sufficient cause to issue the Notice. The Tenant’s application to cancel the Notice is dismissed. The tenancy is ending, under the Notice, as described below.

Under section 55 of the *Act*, when a Tenant’s application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession. Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

I find that the Notice complies with the requirements of form and content. The Landlord is entitled to an order of possession. I find the Landlord is entitled to an order of possession effective **May 31, 2018, at 1pm after service** on the Tenant.

As the Tenant was not successful with his application, I decline to award him recovery of the filing fee.

Conclusion

The Tenant's application to cancel the Notice is dismissed.

The Landlord is granted an order of possession effective **May 31, 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: May 22, 2018

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Residential Tenancy Branch