



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, OLC

### Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Landlord under the *Residential Tenancy Act* (the “Act”), seeking cancellation of a One Month Notice to End Tenancy for Cause and an order for the Landlord to comply with the Act, regulation or tenancy agreement.

I note that section 55 of the Act requires that when a tenant submits an Application seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with section 52 of the Act.

The hearing was convened by telephone conference call and was attended by the agent for the Landlord (the “Agent”), and the Tenant, both of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Neither party raised any concerns regarding the service of documentary evidence.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”); however, I refer only to the relevant facts and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be e-mailed to them at the e-mail addresses provided in the hearing.

### Preliminary Matters

#### **Preliminary Matter #1**

At the outset of the hearing I identified that the Tenant had applied to cancel a One Month Notice to End Tenancy for End of Employment; however, the Notice to End Tenancy in the documentary evidence before me is a One Month Notice to End

Tenancy for Cause. As the same form is used to end a tenancy for cause and end of employment, I asked the Tenant if she had made an inadvertent error in her application. The Tenant confirmed that she had accidentally applied to cancel a One Month Notice to End Tenancy for End of Employment instead of the One Month Notice to End Tenancy for Cause, however, both parties acknowledged that they understood that the Notice to End Tenancy being disputed in the hearing was in fact the One Month Notice to End Tenancy for Cause. As no objections were raised by either party and it is reasonable under the circumstances, I therefore emend the Application to reflect that the Tenant is seeking cancellation of the One Month Notice to End Tenancy for Cause (the "One Month Notice").

### **Preliminary Matter #2**

In her Application the Tenant sought both cancellation of a One Month Notice and an order for the Landlord to comply with the *Act*, regulation, or tenancy agreement with regards to property maintenance. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As the Tenant applied to cancel a One Month Notice for repeated late payment of rent, I find that the priority claim relates to whether the tenancy will continue and the payment of rent. As the Tenant's Application for an order for the Landlord to comply with the *Act*, regulation, or tenancy agreement is not related to the One Month Notice or rent, I therefore exercise my discretion to dismiss this claim with leave to re-apply.

### **Preliminary Matter #3**

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Residential Tenancy Branch (the "Branch") under Section 9.1(1) of the *Act*.

### **Issue(s) to be Decided**

Is the Tenant entitled to cancellation of the One Month notice?

If the Tenant is unsuccessful in cancelling the One Month notice, is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

### Background and Evidence

The parties agreed that the tenancy began in mid-2014 and that rent at the start of the tenancy was \$800.00. The parties also agreed that rent in the amount of \$884.35 is currently due on the first day of each month, plus a separate \$30.00 parking fee.

The Agent testified that the Tenant pays her rent by preauthorized debit and that her rent payments for April, July, October, and December of 2017, and March of 2016 all bounced due to insufficient funds. In support of this testimony the Agent provided a copy of the rent payment ledger for the Tenant's rental unit in the documentary evidence before me.

The Agent stated that as a result of the five late rent payments a One Month Notice was posted to the door of the Tenant's rental unit on March 27, 2018, and the Tenant confirmed receipt on that date. The One Month Notice in the documentary evidence before me, dated March 27, 2018, has an effective vacancy date of April 30, 2018, and states the reason for ending the tenancy is because the Tenant is repeatedly late paying rent. In the details of cause section of the One Month Notice it also states that the Tenant paid her rent late on April 7<sup>th</sup>, July 11<sup>th</sup>, October 12<sup>th</sup>, and December 8<sup>th</sup> of 2017 and March 16<sup>th</sup> of 2018.

The Tenant acknowledged that she made the above noted late rent payments and that she is obligated to pay the rent on time and in full each month. However, the Tenant stated that she was unable to pay the rent on time due to no fault of her own as she was transitioning from long-term disability back to employment with an employer who had closed her previous department. As a result, the Tenant stated that her employer was required to find her a new job and her transition back to work was complicated. In any event, the Tenant stated that she is now back to work and therefore there will be no further issues with the late payment of rent. Further to this, the Tenant stated that she did not have a history of late rent payment prior to this brief period at the end of 2017 and the start of 2018.

Both parties agreed that rent has been paid for use and occupancy of the rental unit for June, 2018.

### Analysis

Based on the testimony and documentary evidence before me for consideration, I find that the Tenant was served with the One Month Notice on March 27, 2018, the date she acknowledged receiving it.

Section 47 of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent. Residential Tenancy Policy Guideline (the "Policy Guideline") 38 states that three late payments of rent are the minimum sufficient to justify ending a tenancy, that the late payments need not be consecutive, and that the history of payments made on time is largely irrelevant, except where the late payments are so far apart that in the circumstances, the tenant cannot be said to be "repeatedly" late.

Both parties agreed that rent in the amount of \$884.35 was due on the first day of each month and that rent was paid late in April, July, October, and December of 2017, and March of 2016. Although the late payments are not consecutive and sometimes have several months between them, I find that five late rent payments within a 12 month period constitute repeated late payment. While the Tenant provided testimony regarding why the late payments were made, I find that the rationale given by her amounts to an excuse for why she did not have the money to pay her rent on time, rather than a bona fide reason for the late payments, such as an unforeseeable bank error entirely beyond her control. As a result, I find that the Landlord had sufficient cause to end the tenancy for late payment of rent pursuant to section 47 of the *Act* and the Tenant's Application seeking cancellation of the One Month Notice is therefore dismissed without leave to reapply.

Having made the above finding, I must now turn my mind to whether the Landlord is entitled to an Order of Possession. As the One Month Notice is signed and dated by an agent for the Landlord, gives the address of the rental unit, states the effective date of the notice and the grounds for ending the tenancy, and is in the approved form, I find that it complies with section 52 of the *Act*. Based on the above, the Landlord is therefore entitled to an Order of Possession pursuant to section 55 of the *Act*. As the effective date of the One Month Notice has passed and the parties agree that rent for use and occupancy of the rental unit had been paid for June, 2018, the Order of Possession will be effective at 1:00 P.M. on June 30, 2018.

Conclusion

The Tenant's Application seeking cancellation of the One Month Notice is dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective at **1:00 P.M. on June 30, 2018**, after service on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this 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: June 12, 2018

---

Residential Tenancy Branch