



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, LRE, MDCT, PSF

### Introduction

This hearing convened as a result of Tenants' Application for Dispute Resolution wherein the Tenants requested the following relief:

- an Order canceling a 1 Month Notice to End Tenancy for Cause issued on March 15, 2018 (the "Notice");
- monetary compensation from the Landlord;
- an Order restricting the Landlord's right to enter the rental unit; and
- an Order that the Landlord provide services or facilities required by law.

The hearing was conducted by teleconference at 9:00 a.m. on June 5, 2018. At the outset of the hearing, only the Landlord and his agent called in. At approximately 9:12 a.m. the Tenant, A.M., announced his presence.

Both parties were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. No issues with respect to service or delivery of documents or evidence were raised by either party.

At 9:26 a.m., after I had made my Decision the Tenant abruptly disconnected from the line. I did not hear any further evidence from the Landlord after 9:26 a.m., and merely confirmed his email address for the purposes of delivery of the Decision and Order of Possession.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the

evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matter—Tenant's Claims

In the Application for Dispute Resolution the Tenant requested and Order canceling the Notice, monetary compensation from the Landlord as well as Orders which only apply in the event of a continued tenancy.

*Residential Tenancy Branch Rule of Procedure 2.3* provides that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Hearings before the Residential Tenancy Branch are schedule on a priority basis. Time sensitive matters such as a tenant's request for emergency repairs or the validity of a notice to end tenancy are given priority over monetary claims.

It is my determination that the priority claim before me is the validity of the Notice. I also find that this claim is not sufficiently related to the Tenant's monetary claim; accordingly I exercise my discretion and dismiss the Tenant's monetary claim with leave to reapply.

For reasons which will be further detailed, matters which relate to the continued tenancy are no longer relevant; accordingly those claims are dismissed without leave to reapply.

### Issue to be Decided

1. Should the Notice be cancelled?

### Background and Evidence

*Rule 6.6 of the Residential Tenancy Branch Rules of Procedure* provides that when a Tenant applies to cancel a notice to end tenancy the landlord must present their case first as it is the landlord who bears the burden of proving the reasons for ending the notice on a balance of probabilities. As such, even though the application before me was filed by the Tenant, the Landlord presented their evidence first.

The Landlord testified as follows. He confirmed that he leases the rental property for business purposes and in turn rents it out. He stated that the Tenant, A.M., was a roommate of a previous Tenant, E.S. The Landlord testified that E.S. moved out of the

rental property some time in November of 2017 and A.M. remained in the rental unit despite E.S. moving out. The Landlord further stated that monthly rent is \$1,800.00, the Tenants have been repeatedly late paying rent since November 2017 and ceased paying altogether in March 2018.

The Landlord issued the Notice on March 15, 2018. A copy of the Notice was provided in evidence although the copy before me was too faint for me to see which of the boxes were checked off indicating the reason for issuing the Notice. The Landlord's assistant, K.H., testified that the box "The Tenant is repeatedly late paying rent" was checked off on the original copy.

As noted, although the Tenant, A.M., did not announce his presence until sometime into the hearing, he claimed to have been on the line since before the hearing began and as such heard the Landlord's evidence. A.M. stated that he was alone in the room from which he was making the telephone call.

A.M. claimed that in total he "paid rent" in the amount of \$7,000.00 to the Landlord by way of a business "R.T.C. C. & D.S." which he claimed he had with the Landlord and which included an agreement that the Landlord was to pay his rent. The Tenant failed to submit any evidence to support this claim.

A.M. then confirmed that the monthly rent is \$1,800.00. He also confirmed that he has not paid since March 2018 as he further claimed the Landlord damaged his vehicle with a forklift.

In reply, J.M. stated that he has no agreement and no business relationship with A.M. whatsoever. J.M. characterized the Tenants as "squatters" who refused to leave the rental unit when the original tenancy with E.S. ended in November 2017, repeatedly paid rent late from that date forward and then stopped paying rent in March of 2018

### Analysis

The Landlord issued the Notice pursuant to section 47(1)(b) of the *Residential Tenancy Act* which allows a landlord to end a tenancy for cause where the tenant is repeatedly late paying rent.

*Residential Tenancy Branch Policy Guideline 38—Repeated Late Payment of Rent* provides that three late payments are the minimum number sufficient to justify a notice under these provisions.

I find that the Landlord established a tenancy with the Tenants by accepting rent after the original tenancy with E.S. ended in November 2017. The parties agreed that the monthly rent payable was \$1,800.00.

Section 26 of the *Residential Tenancy Act* provides that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the *Act*, the *Regulations* or the tenancy agreement, unless the tenant has a *right under the Act* to deduct all or a portion of the rent.

An alleged business relationship with the landlord is not a “right under the *Act*”, unless the parties enter into a tenancy agreement which specifically provides the Tenant is to be credited a set amount towards rent, such that the Tenant’s services can be characterized as “value given” under section 1 of the *Act*. In this case, no such written tenancy agreement exists. Further, the Landlord adamantly denies any such business relationship with the Tenant. While it is always difficult to reconcile conflicting versions of events, without corroborating evidence I am unable to find that such a business relationship exists.

I accept the Landlord’s testimony that the Tenants have been repeatedly late paying rent as claimed on the Notice. The Tenant did not dispute this claim. Further he conceded that he has not paid rent since March of 2018 as he alleges the Landlord damaged his vehicle. While the Tenant may have a claim for compensation against the Landlord in respect of his vehicle, that does not affect his responsibility to pay rent when due.

I find the Tenant has been repeatedly late paying rent justifying an end to this tenancy. I therefore uphold the Notice; the tenancy shall end in accordance with the Notice. As the effective date of the Notice is April 14, 2018 and has passed, the Landlord is entitled to an Order of Possession effective two days after service.

### Conclusion

The Tenants’ request for an Order canceling the Notice is dismissed.

The Landlord is granted an Order of Possession which shall be effective two days after service on the Tenants. Should the Tenants fail to vacate the rental unit as required the Landlord may file and enforce the Order in the B.C. Supreme Court.

The Tenants' claim for monetary compensation from the Landlord is dismissed with leave to reapply.

As the tenancy is ending, the Tenants' claim for Orders restricting the Landlord's right to enter the rental unit and provide services or facilities as required by law is dismissed without leave to reapply.

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 8, 2018

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Residential Tenancy Branch