



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, CNR, OPC, FFL

### Introduction

This was a cross application hearing that dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice"), pursuant to section 47; and
- cancellation of the landlord's 10 Day Notice to End Tenancy (the "10 Day Notice"), pursuant to section 46

This hearing also dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession, pursuant to sections 47 and 55; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord's housing manager (the "landlord") confirmed that he had authority to speak on behalf of the landlord as agent at this hearing.

### Service of Applications

The landlord testified that he served the tenant the notice of dispute resolution package by registered mail on June 2, 2018. The landlord provided the Canada Post Tracking Number to confirm this registered mailing. The tenant confirmed receipt of the dispute resolution package. I find that the tenant was deemed served with this package on June 7, 2018, five days after its mailing, in accordance with sections 89 and 90 of the *Act*.

The tenant testified that he did not serve the landlord with his application for dispute resolution. The landlord confirmed that he did not receive the tenant's application for dispute resolution.

I find that the tenant failed to serve the landlord with his application for dispute resolution pursuant to section 89 of the *Act*. At the hearing, I advised the tenant that I was dismissing his application; however, since the landlord's application was proceeding, the One Month Notice would be dealt with in today's hearing.

I dismiss the tenant's application to cancel the 10 Day Notice with leave to reapply. I dismiss the tenant's application to cancel the One Month Notice, without leave to reapply.

### Jurisdiction

At the beginning of the hearing the landlord testified that the rental property is not:

- on reserve or treaty lands;
- a not for profit housing cooperative renting to a member of the cooperative;
- emergency or transitional housing; and
- living accommodation that is made available in the course of providing rehabilitative or therapeutic treatment services.

I find that I have jurisdiction to hear this application.

### Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession, pursuant to sections 47 and 55 of the *Act*?
2. Is the landlord entitled to recover the filing fee for this application from the tenant pursuant to section 72 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began several years ago and is currently ongoing. Monthly rent in the amount of \$570.00 is payable on the first day of

each month. A security deposit of \$400.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agreed to the following facts. The tenant has paid rent after the 1<sup>st</sup> of the month on numerous occasions including February, March and April 2018. On April 24, 2018, the landlord personally served the tenant with a One Month Notice stating an effective date of June 1, 2018. I find that the One Month Notice was served on the tenant, in accordance with section 88 of the *Act*, on April 24, 2018.

The One Month Notice stated the following reasons for its issuance:

- The tenant is repeatedly late paying rent;
- The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- The tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and
- The tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.

The landlord testified that the tenant assaulted another tenant ("tenant 2") and that this assault was caught on CCTV. The landlord testified that he watched the video and that the tenant, punched, pushed, aggressively hugged, kissed and put his hands on the throat of tenant 2. The landlord submitted into evidence a statement from tenant 2 confirming same.

The tenant testified that he did not assault tenant 2 and that tenant 2 was mentally unstable. Neither party submitted the assault video into evidence

Witness C.F. testified that she had a conversation with tenant 2 and that tenant 2 regrets writing the statement submitted by the landlord.

### Analysis

Section 47(1)(b) 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.

Policy Guideline 38 states that three late payments are the minimum number sufficient to justify a notice under section 47(1)(b).

In this case, the tenant testified that rent was due on the first of the month and that for the months of February, March and April 2018, he paid rent after the first of the month. Based on the testimony of both parties, I find that the tenant breached section 47(1)(b) of the *Act* by repeated late payment of rent. I find that this tenancy ended on June 1, 2018, the effective date on the One Month Notice.

As I have found that this tenancy ended due to repeated late payment of rent, I decline to consider the other causes to end tenancy contained in the One Month Notice.

Because the landlord is successful in his application I find that he is entitled to recover the \$100.00 filing fee for this application from the tenant.

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security due to the tenant. I find that the landlord is entitled to retain \$100.00 of the tenant's security deposit in satisfaction of his monetary claim for the filing fee against the tenant.

### Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenant**. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 20, 2018

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Residential Tenancy Branch