



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC

### Introduction

This hearing dealt with the tenant's application pursuant to section 47 of the *Residential Tenancy Act* (the *Act*) for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice).

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As the tenant confirmed that he received the 1 Month Notice from the landlord on May 2, 2018, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*. As the landlord's representatives confirmed that they received a copy of the tenant's dispute resolution hearing package in May 2018, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*.

The co-owner who attended this hearing (PK) testified that they posted copies of the landlord's written evidence on the tenant's door on June 4, 2018. This written evidence was comprised of copies of text messages exchanged with the tenant. Although PK said that there was a witness for this posting, they provided no witness statement and that witness was not called to provide sworn testimony at this hearing. The tenant and the tenant's advocate maintained that the tenant did not receive this written evidence. The tenant and the tenant's advocate maintained that they provided the landlord with copies of their written evidence, which the landlord's representatives denied receiving. The tenant's advocate said that a video that the tenant had submitted for consideration for this hearing was not provided to the landlord.

I advised the parties that I could not consider the tenant's video evidence, as it had not been served to the landlord. With the exception of a written statement from the tenant, the remainder of the parties' written evidence was of little real benefit to the issues properly before me, that being the alleged repeated late payment of rent by the tenant. The parties both entered sworn testimony referencing the contents of their text message exchanges, which both parties agreed had been communicated with one another during the course of this tenancy. Under these circumstances, there was little need to refrain from considering written evidence, with the exception of the video evidence, as the sworn testimony was sufficient to consider the limited relevance that both side's written evidence had to the matter before me.

At the commencement of this hearing, I clarified that the tenant's name as it appeared on both the 1 Month Notice and the tenant's own application to cancel that Notice reversed the tenant's first and second names, and misspelled the tenant's last name. With the agreement of both parties and in accordance with the powers delegated to me to correct minor errors of this nature, I advised the parties that I would be correcting the tenant's name to the correct version as is identified above.

#### Issues(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

#### Background and Evidence

The tenant gave undisputed sworn testimony that their tenancy began about 2009. Although the landlord said that there is a written Residential Tenancy Agreement (the Agreement) signed by the tenant, neither party chose to produce that Agreement for the purposes of this hearing. The parties agreed that monthly rent for this rental unit in this 44 unit rental property is currently set at \$468.00, payable by the first of each month. The landlord continues to hold the \$200.00 security deposit paid by the tenant when this tenancy began.

The landlord's representatives confirmed that as of the date of this hearing all outstanding rent has been paid by the tenant. They also gave undisputed sworn testimony that the tenant's payment for June was accepted for use and occupancy only and not to extend this tenancy beyond the corrected effective date of the 1 Month Notice, June 30, 2018. The tenant did not dispute the landlord's assertion that the

tenant realized that the landlord was still intent upon ending this tenancy for cause on the basis of the 1 Month Notice issued in May 2018.

The tenant entered into written evidence a copy of the 1 Month Notice of May 2, 2018. In that Notice, the landlord cited the following reason for the issuance of the Notice:

*Tenant is repeatedly late paying rent.*

Landlord representative RL (RL) gave sworn testimony that the tenant has been late in paying their rent every month since June 2017, when a major fire swept through this community. Although the landlord's representatives did not dispute the tenant's claim that the tenant (and others) were given permission to pay their rent late for July 2017, both said that the tenant has been late in paying their rent every month since then. Landlord representative RL said that he does three sweeps through this rental property twice on the last day of each month and once the following day to obtain rental payments from tenants. RL also gave undisputed sworn testimony that all tenants have his cellphone number in case they miss his trip to the rental property to collect monthly rent and that his number is clearly displayed in public areas of the rental property.

Although RL said that he issues receipts for all rental payments, the landlord's representatives and the tenant did not submit these receipts into written evidence. RL explained that he was out of the province at present and did not have the details of the receipts issued to the tenant during this tenancy at his disposal. The tenant confirmed that the landlord usually issues written receipts for his rent payments, estimating that this happens about 80% of the time.

Co-owner PK requested an opportunity to submit copies of the rent receipts after the hearing and at one point also requested an adjournment so that the landlord could retrieve these receipts as reference points for the landlord's sworn testimony. I refused these requests as I noted that the burden of proof with respect to an application to end a tenancy for cause rests with the landlord. I advised the parties that there was no reason why the landlord could not have either entered these receipts or a rent ledger into written evidence, or at the least have had these records available for this hearing. Similarly, I also note that if the tenant had receipts to prove that he had consistently paid his rent on time, there is no reason that the tenant could not have entered this rather compelling written evidence in support of his assertion that the landlord was falsely claiming that the tenant was frequently late in paying his rent.

Landlord PK gave sworn testimony that the tenant had been late in paying his rent every month since June 2017. PK testified initially testified that 10 Day Notices to End Tenancy for Unpaid Rent (10 Day Notices) had been issued to the tenant "every month". When asked for specifics on these 10 Day Notices, PK said that the tenant paid half of his rent in April and the remaining half in May. PK testified that 10 Day Notices were issued to the tenant on May 2, 2018 and June 2, 2018. Although he could not provide any dates, PK also testified that there were other 10 Day Notices issued before May 2018, citing one that he believed was issued in February 2018. On this point, Landlord RL subsequently testified that 10 Day Notices were issued to the tenant in April, May and June of 2018.

The tenant testified that he has not been repeatedly late in paying his rent. The tenant testified that his text messages demonstrated that he attempted a number of times to locate RL to make his rent payments. He testified that with the exception of the immediate aftermath of the fire, he had paid his rent on time. The tenant gave sworn testimony that the only 10 Notice he had received from the landlord was one issued in June 2018.

Much of the tenant's written evidence, sworn testimony and information provided by the tenant's advocate focussed on the leniency extended by the landlord in June 2018, following the fires that swept through this community. The tenant also alleged that the landlord had ulterior motives for trying to end this tenancy for cause beyond the sole issue of alleged late payment of rent identified in the landlord's 1 Month Notice.

The landlord's leniency in the immediate post-fire period was not disputed by the landlord's representatives. The task before me was to consider the evidence relating to late payment of rent as it existed at the time that the 1 Month Notice was issued. Other issues in dispute arising out of this tenancy and the 10 Day Notice for June 2018 would not demonstrate evidence of late payment of rent as of the date of the 1 Month Notice.

### Analysis

Paragraph 47(1)(b) of the *Act* establishes that a landlord may end a tenancy by giving notice to end the tenancy for cause if "the tenant is repeatedly late paying rent." Residential Tenancy Branch Policy Guideline #38 provides the following guidance regarding the circumstances whereby 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...*

*However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be "repeatedly" late...*

Section 26(1) of the *Act* establishes that "a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent." There is no dispute that the Agreement requires the tenant to pay all of the rent by the first of each month.

As was discussed with the parties and as noted above, the landlord bears the burden of proof in demonstrating that the reason or reasons cited in the 1 Month Notice constitute valid grounds for ending a tenancy for cause.

In a case such as this one, where both parties agreed that the landlord has issued rent receipts for at least 80% of the months and where the co-owner of this property, PK, claimed that a series of 10 Day Notices were issued to the tenant, it would appear that the parties would have had ample written evidence to support their positions. Rather, the parties supplied very limited written evidence. which both parties disputed receiving from the other side. Other than the 1 Month Notice, and claims which do not seem to be particularly contentious regarding the landlord's leniency for collecting rent for July 2017, the parties produced little written evidence to assist in determining whether the tenant had been late in paying rent on at least three occasions prior to the landlord's issuance of the 1 Month Notice on May 2, 2018. Written evidence shared with one another at the time, such as rent receipts, represent the best evidence to assess the validity of a 1 Month Notice for repeated late payment of rent.

In the absence of written evidence that both parties claimed to possess that would have led to a definitive determination regarding the alleged late payment of rent, both parties relied almost solely on their sworn testimony. In this regard, I found both parties less than convincing in their sworn testimony and am only too aware that at least one party has seriously misrepresented the history of the tenant's rental payments prior to the issuance of the 1 Month Notice.

Under such circumstances and as the burden of proof rests with the landlord, I find on a balance of probabilities that the landlord has failed to demonstrate to the extent required

that the tenant has been repeatedly late in paying his rent. Not only did the landlord fail to provide copies of rent receipts that the landlord's representatives admitted existed, but the landlord produced no tenant rent ledger to support the claim that the tenant had been repeatedly late in paying rent. Even without these documents, the landlord could have but did not enter into sworn testimony detailed accounts as to when the tenant had paid his rent for the months prior to the issuance of the 1 Month Notice. Neither landlord representative chose to ensure that they had obtained this critical information for this hearing. Perhaps RL being out of the province at the time of this hearing accounted for some of this lack of information. Rather, the landlord's representatives relied almost entirely on general statements that lacked detail and were occasionally even inconsistent with one another, as occurred with respect to Landlord PK's initial claim that 10 Day Notices were issued to the tenant every month.

For these reasons, I allow the tenant's application to cancel the 1 Month Notice. This decision does not bar the landlord from issuing a future 1 Month Notice for new examples of the late payment of rent by the tenant that have occurred after the landlord's issuance of the 1 Month Notice of May 2, 2018, that was considered in this decision.

### Conclusion

The tenant's application to cancel the 1 Month Notice is allowed. The 1 Month Notice of May 2018 is set aside and is of continuing force or effect. This tenancy continues until ended in accordance with the *Act*.

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 19, 2018

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Residential Tenancy Branch