



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, FFL

### Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Landlord for an Order of Possession based on a One Month Notice to End Tenancy for Cause. The Landlord also requests an order for payment of the filing fee.

The Landlord and Tenant both appeared for the scheduled hearing. The Tenant's sister, HF, also appeared for the hearing. Neither party raised a concern about the service of the Notice of Hearing or evidence that was submitted by the parties.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed evidence, make submissions, call witnesses and to cross-examine the other party on the relevant evidence provided in this hearing.

Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

There was some discussion at the outset about whether the advocate would be presenting direct evidence as a witness or whether it was more beneficial for her to assume the role of advocate for her brother so that she could be present for the entire proceeding. After some consideration, the Tenant decided that his sister would assist him in a role as an advocate and she was invited to remain in the hearing for the duration.

### Issues to be Decided

Is the Landlord entitled to an Order of Possession, pursuant to sections 47 and 55 of the Residential Tenancy Act ("Act")?

Is the Landlord entitled to payment of the filing fee, pursuant to section 72 of the Act?

### Background and Evidence

This tenancy began January 31, 2018 as a fixed term tenancy for one year; monthly rent was set at \$1,200.00 per month, payable on the 1<sup>st</sup> of each month. No security deposit was requested or paid. A copy of the tenancy agreement was submitted into evidence.

The Landlord testified that the Tenant is repeatedly late with his rent payment. Cheques were provided for February and March without concern. However, in April there was a dispute that arose when the Tenant states he paid the rent in cash and that the person receiving the payment may or may not have provided a proper rent receipt. The May rent was paid in full. In June, the Landlord was back in the country and addressed the issue of the April rent arrears and the parties agreed to a \$600.00 further payment which was made on June 8, 2018 in full satisfaction of the April rent; a receipt was submitted into evidence.

The Landlord then provided receipts dated June 13, June 26, July 1, July 12, and July 14 which show that the Tenant was making payments over the course of those weeks to pay the June and July rent. The rent was paid up in full by that time and there is no dispute about the August and September rent payments. The Landlord accepted the later payments "for use and occupancy only".

The Landlord served a One Month Notice to End Tenancy for Cause dated July 18, 2018 on July 19, 2018 by posting it on the Tenant's door; a copy of that notice and Proof of Service was submitted into evidence. The reason noted on the notice was "repeatedly late payments" and the Landlord argued that Policy Guideline 38 of the Residential Tenancy Branch ("RTB") allows an eviction for this reason if there are at least 3 late rent payments.

The Tenant argues that he has no rent arrears and that the late rent payments are due to the following:

- The confusion over the cash payment in April which resulted in rent arrears that were resolved by early June by agreement between the parties;

- His May hospitalization and emergency surgery which required him to remain off work and which disrupted his financial situation, although he returned to work against doctor's orders to ensure rent payments were caught up as quickly as possible; evidence including the hospital admission report were submitted into evidence.

The Tenant did not dispute the Notice to End Tenancy by filing any application with the RTB. He states that it was his understanding that there was no problem and that the Landlord was all right with everything as rent was current and being accepted. He was under the impression that no eviction would be pursued. The Landlord states that he never told the Tenant this and that he accepted later payments leading up to the hearing date for use and occupancy only. He requests an Order of Possession and his \$100.00 filing fee.

### Analysis

A landlord's right to terminate a tenancy for unpaid rent is in section 47 of the Act which reads in part:

#### ***Landlord's notice: cause***

**47** (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:...*

*(b) the tenant is repeatedly late paying rent;...*

(2) *A notice under this section must end the tenancy effective on a date that is*

*(a) not earlier than one month after the date the notice is received, and*

*(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*

(3) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*

(4) *A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.*

*(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant*

*(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and*

*(b) must vacate the rental unit by that date.*

Based on undisputed testimony of the Landlord, I find that the Tenant was served with the Notice to End Tenancy, and I find that the One Month Notice does comply with the form and content provisions of section 52 of the *Act*, which states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

Section 47(4) of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. I find that the Tenant has failed to file his application for dispute resolution within the ten days of service granted under section 47(4) of the *Act*. Accordingly, I find that the Tenant is *conclusively presumed* under section 47(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 1 Month Notice, December 31, 2016.

The Tenant had provided evidence to explain his personal difficulties which arose in May and which delayed his rent payments in June and July. However, there is insufficient evidence before me to show that there was any impediment to him filing a dispute application after he was served with the Notice to End Tenancy on July 19, 2018. As he was apparently back working and paying his expenses by that date, he had the opportunity to file a dispute to the Notice; by failing to do so, the legislation states he is presumed to have accepted that the tenancy will be terminated on the effective date. There is insufficient evidence before me to support the claim that the Landlord withdrew his Notice to End Tenancy or did not intend to pursue an Order of Possession.

The Landlord's request for an Order of Possession is hereby granted and I also award the filing fee of \$100.00 and grant a monetary order in favour of the Landlord.

This monetary order must be served on the Tenant and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Tenant fails to make payment. Copies of this monetary order are attached to the Landlord's copy of this Decision.

### Conclusion

I grant an Order of Possession to the Landlord effective **two days after service of this Order** 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. I further grant an Order for payment of \$100.00 to the Landlord by the Tenant forthwith.

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: September 28, 2018

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Residential Tenancy Branch