



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, CNC, MT, FFT

### Introduction

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

- cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47;
- more time to cancel a notice to end tenancy, pursuant to section 66;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, 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 tenant testified that the landlord was served the notice of dispute resolution package by registered mail on July 19, 2018 at the landlord's address listed on the notice to end tenancy. The tenant provided the Canada Post Tracking Number to confirm this registered mailing. The tenant testified that this package was returned to sender with a note that the landlord no longer lived at that address. The landlord confirmed that the address the tenant sent the notice of dispute resolution to was correct and testified that he did not receive the notice of dispute resolution. The tenant submitted into evidence the Canada Post Receipt and the address sticker.

The landlord testified that he knew of today's hearing because he received tenant's amendment package. The landlord could not explain why the original dispute resolution package sent by the tenant was returned to sender. While the landlord testified that he

did not receive the notice of dispute resolution, he testified that did not object to the hearing proceeding forward on its merits. Because the tenant sent the notice of dispute resolution package to the correct address via registered mail, in accordance with section 89 of the *Act*, I find that the tenant is entitled to rely on the deeming provisions in section 90 of the *Act*. I find that the landlord was deemed served with the notice of dispute resolution package on July 24, 2018, five days after its mailing, in accordance with sections 89 and 90 of the *Act*.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution 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 the *Act*.

#### Preliminary Issue- Severance

Residential Tenancy Branch Rule of Procedure 2.3 states 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.

It is my determination that the priority claim regarding the One Month Notice to End Tenancy and the continuation of this tenancy is not sufficiently related to the tenant's claim for damage or compensation under the *Act*, to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The tenant's claim for monetary damages are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the One Month Notice. I exercise my discretion to dismiss the tenant's monetary claims with leave to reapply.

#### Preliminary Issue- More Time to Cancel the Notice to End Tenancy

At the start of the hearing, the tenant confirmed that she had received the One Month Notice in her mailbox on June 30, 2018. As a result, pursuant to the 10-day time limit provided for by section 47(4) of the *Act*, the last day for the tenant to file her application for dispute resolution (the "application") to dispute the One Month Notice to End Tenancy would have been July 10, 2018.

The tenant testified that she attended a Service BC office on July 10, 2018 and submitted her fee waiver application and application for dispute resolution, without any evidence. The tenant testified that she was told by an information officer that if her fee waiver application was denied she could pay the \$100.00 and that her application would still be marked as being received on July 10, 2018, even if she paid the \$100.00 after that date. The tenant submitted into evidence a Service BC receipt dated July 10, 2018 showing that the tenant submitted her fee waiver application on July 10, 2018.

The tenant testified that her fee waiver application was denied because she made too much money and that another information officer with the RTB told her that she was now past the time limit allowed to file her claim and would have to apply for more time to cancel the notice to end tenancy.

In making my decision on the tenant's request for more time to file the application, I take into consideration the following provisions. Section 47(5) of the *Act* states that a tenant who does not make an application within 10 days to dispute a One Month Notice is conclusively presumed to have accepted that the tenancy ends on the effective vacancy date of the One Month Notice and must vacate the rental unit by that date. However, section 66(1) of the *Act* allows an Arbitrator to extend this time limit if there are exceptional circumstances.

Section 59(2)(c) of the *Act* provides that an application must be accompanied by the prescribed fee. In addition, Rule 2.6 of the Residential Tenancy Branch Rules of Procedure states that an application has been made when the filing fee is paid or all the documents for a fee waiver are submitted to the Residential Tenancy Branch. In addition, I also take into consideration the exceptional circumstances criteria listed in Residential Policy Guideline 36 as follows:

- the party did not willfully fail to comply with the relevant time limit
- the party had a bona fide intent to comply with the relevant time limit
- reasonably and appropriate steps were taken to comply with the relevant time limit
- the failure to meet the relevant time limit was not caused or contributed to by the conduct of the party
- the party has filed an application which indicates there is merit to the claim
- the party has brought the application as soon as practical under the circumstances

Based on the foregoing, I grant the tenant's request for more time to cancel the One Month Notice. I make this finding because there is sufficient evidence before me that the tenant attended at the Service BC office on the last day within the correct time limit provided for by the *Act* and attempted to diligently pursue her application.

Even though the tenant left it until the last day of the time limit provided for by the *Act*, I find that the tenant acted reasonably as it was her understanding that she was filing her application according to the time line provided in the *Act*. I find that the tenant had a bona fide intent to file her application on July 10, 2018 and that her conduct does not suggest that there was any willful or intentional neglect by the tenant to thwart the process. As a result, I now make findings on the One Month Notice as follows.

#### Issue(s) to be Decided

1. Is the tenant entitled to cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?
3. If the tenant's application is dismissed and the landlord's notice to end tenancy is upheld, is the landlord entitled to an Order of Possession, pursuant to section 55 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 on June 1, 2016 and is currently ongoing. Monthly rent in the amount of \$1,820.00 is payable on the first day of each month. Prior to September 2018, rent was \$1,750.00 per month, due on the first day of each month. A security deposit of \$875.00 and a pet damage deposit of \$875.00 was paid by the tenant to the landlord.

The landlord testified that on June 27, 2018 he served the tenant with a One Month Notice to End Tenancy for Cause with an effective date of July 31, 2018 (the "One

Month Notice”) by putting it in the tenant’s mailbox. The tenant confirmed receipt of the One Month Notice on June 30, 2018.

The One Month Notice stated the following reasons for ending the tenancy:

- Tenant is repeatedly late paying rent.
- Security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.

The landlord testified that the tenant paid rent late in January, April and June of 2018. At the time of the hearing the landlord had not entered any documents into evidence. I allowed both parties 24 hours to submit evidence regarding the payment of rent in January, April and June 2018. After the hearing, the landlord submitted copies of internet e-transfers showing the following rent payments from the tenant to the landlord on the following dates:

- January 3, 2018: \$1,750.00
- April 2, 2018: \$1,750.00
- June 2, 2018: \$1,000.00
- June 6, 2018: \$750.00

The tenant denied paying rent late in January 2018 but was unable to tell me on what date she paid rent for January 2018.

The tenant denied paying rent late in April 2018 but later testified that she did not know when she paid rent for April 2018.

The tenant agreed that she did not pay June 2018’s rent on June 1, 2018 and that she paid it in two installments after June 1, 2018.

When I asked the tenant to direct me to evidence supporting her testimony that she paid rent on time for January and April 2018, the tenant testified that she uploaded it but was unable to be more specific. I reviewed all of the tenant’s evidence and found a collection of pieces of bank statements that were cut up and re-assembled. The dates and transactions did not all line up and it was impossible to determine what transactions occurred on what dates.

Both parties agreed that in June of 2017 the tenant was unable to pay her rent and requested that the landlord use her security deposit and pet damage deposit for her June 2017 rent. The landlord agreed. After June of 2017 the tenant started to pay back

her deposits at the rate of \$100.00 per month. The tenant testified that she paid back \$875.00 of her deposits and the landlord testified that the tenant paid back \$800.00 of her deposits.

### Analysis

Based on the testimony of both parties, I find that service of the One Month Notice was effected on the tenant on June 30, 2018, in accordance with section 88 of the *Act*.

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.

Residential Policy Guideline 38 states that three late payments are the minimum number sufficient to justify a notice under these provisions. It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments.

I find that the tenant was late paying rent in January, April, and June of 2018. I therefore dismiss the tenant's application without leave to reapply.

Section 55 of the *Act* states that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if:

- the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Upon review of the One Month Notice, I find that it meets the form and content requirements of section 52 of the *Act*.

Since I have dismissed the tenant's application and upheld the landlord's One Month Notice, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*.

Since I have found that the landlord is entitled to an Order of Possession for repeated late payment of rent, I decline to consider if the landlord is entitled to an Order of

Possession for the security or pet damage deposit not being paid within 30 days as required by the tenancy agreement.

### 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: September 11, 2018

---

Residential Tenancy Branch