



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OLC, OT

### Introduction

On August 9, 2018, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”), seeking an Order for the Landlord to Comply pursuant to Section 62 of the *Act*, and seeking other grounds.

The Tenant attended the hearing and L.B. attended the hearing as an agent for the Landlord. All in attendance provided a solemn affirmation.

The Tenant advised that he served the Landlord with the Notice of Hearing package and his evidence by registered mail on August 9, 2018 and the Landlord’s agent confirmed receipt of this. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing package and evidence.

The Landlord’s agent advised that their evidence was served to the Tenant by registered mail on September 13, 2018 and the Tenant confirmed that he received notification of this package; however, he did not pick it up. As the service complies with Rule 3.15 of the Rules of Procedure, and as the evidence has been deemed received as per Section 90 of the *Act*, I have accepted the evidence when rendering this decision.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

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 complies with the *Act*.

#### Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to an Order that the Landlord Comply?

#### Background and Evidence

All parties agreed that the tenancy started on December 3, 2015 and rent was currently established at \$692.00 per month, due on the first day of each month. A security deposit of \$325.00 was also paid.

The Landlord stated that she served the Notice to the Tenant by posting it to his door on July 16, 2018 and the Tenant confirmed this. The reason the Landlord served the Notice is because the "Tenant is repeatedly late paying rent." The effective date of the Notice was August 31, 2018.

The Landlord's agent submitted that the Tenant paid rent late in April, May, June, and July, and September 2018 rent was not paid at all. She referenced the respective 10 Day Notices for Unpaid Rent that were submitted into evidence. She also cited a caution letter sent to the Tenant on May 17, 2018 advising that future late payments of rent would result in the Notice being served.

The Tenant advised that he was on medical employment insurance due to a work-related injury and he did not have enough money to pay the rent on time, as the cheques were not guaranteed. He stated that he has always caught up in rent and paid the late fees. He submitted that the Landlord would not accept September 2018 rent and that he did not have the Landlord's written authorization to pay rent late.

The Landlord's agent advised that she never refused to accept September 2018 rent and that the Tenant had never attempted to pay the rent for September.

### Analysis

In considering this matter, I have reviewed the Landlord's Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52 and I find that it is a valid Notice.

I find it important to note that a Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part as follows:

#### ***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;*

In addition, I note the wording of 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."

The undisputed evidence before me is that the tenancy agreement requires the Tenant to pay all of the rent by the first of each month and that rent was not paid in full on the first of each month more than three times since April 2018. Furthermore, there is no

substantiated evidence before me that the Tenant was allowed to pay rent late contrary to the tenancy agreement. Consequently, I am satisfied that there is a pattern of multiple late payments of rent throughout the months leading up to the issuance of the Notice.

Ultimately, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 52 and 55 of the *Act*. As such, I grant an Order of Possession that is effective **two days after service of this Order** on the Tenant.

### Conclusion

I dismiss the Tenant's Application and uphold the Notice. 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.

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