



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, FFL

### Introduction

On September 20, 2018, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession based on a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

M.W. and J.S. attended the hearing as agents for the Landlord and the Tenant attended the hearing as well. All in attendance provided a solemn affirmation.

The Landlord advised that they served the Tenants each with the Notice of Hearing package and evidence by registered mail on September 26, 2018 and the Tenant 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 Tenants were served the Notice of Hearing packages and evidence.

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.

### Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to recover the filing fee?

### Background and Evidence

All parties agreed that the tenancy started on January 1, 2016 and rent was currently established at \$1,284.00 per month, due on the first day of each month. A security deposit of \$597.50 and a pet damage deposit of \$597.50 were also paid.

The Landlord stated that she served the Notice to the Tenants by posting it to their door on August 20, 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 September 30, 2018.

The Landlord submitted that the Tenant paid rent late in January, February, March, April, July, and August 2018. The Tenant confirmed these late rent payments and advised that they were due to difficulties with Canada Revenue. He stated that he has sorted those issues out, that rent for September, October, and November 2018 have been on time, and that he will have no other issues paying rent on time going forward.

### 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 Tenants are 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 Tenants 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 January 2018. Furthermore, there is no substantiated evidence before me that the Tenants were 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; however, the Landlord offered to extend the effective date of the Order of Possession. As such, the Order of Possession is effective at **1:00 PM on December 31, 2018 after service of this Order** on the Tenants.

As the Landlord has been successful in their claim, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application.

### Conclusion

I grant an Order of Possession to the Landlord effective at **1:00 PM on December 31, 2018 after service of this Order** on the Tenants. Should the Tenants 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: November 5, 2018

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Residential Tenancy Branch