



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FFT

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants filed under the *Residential Tenancy Act* (the “Act”), to cancel a One-Month Notice to End Tenancy for Cause, (the “Notice”) issued October 8, 2018, and to recover the filing fee for this application. The matter was set for a conference call.

Both the Landlord and one of the Tenants attended the hearing and were each affirmed to be truthful in their testimony. They were both provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter is described in this Decision.

### Issues to be Decided

- Should the Notice issued October 8, 2018, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Are the Tenants entitled to the return of their filing fee?

### Background and Evidence

Neither party to this dispute could testify as to the dated the tenancy started; however, both agreed that it was approximately April 1, 2017. The parties agreed that the rent in the amount of \$1,300.00 is to be paid by the first day of each month and the Landlord collected a security deposit of \$600.00 and at the outset of this tenancy.

Both parties agreed that the Landlord personally served the Notice to end tenancy to the Tenants on October 8, 2018. The reason for the Notice was checked off as follows:

- *Tenant is repeatedly late paying rent*

The Notice informed the Tenant of the right to dispute the Notice within 10 days after receiving it. The Notice also informed the Tenant that if an application to dispute the Notice is not filed within 10 days, the Tenant is presumed to accept the Notice and must move out of the rental unit on the date set out on page one of the Notice. The Tenant filed to dispute the Notice on October 15, 2018.

The Landlord testified that the Tenants have been late in paying their rent four times in the last five months, July, August, September, and October 2018. It was pointed out to the Landlord, during the hearing, that he had dated the Notice for November 8, 2018, but served the Notice on October 8, 2018. The Landlord testified that he had made an error on the date he had signed the Notice.

The Tenant testified that they had paid the rent late, but that it that Landlord had never indicated that paying late was a problem, so they thought it was not an issue that could end their tenancy.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Tenants received the Notice on October 8, 2018. Pursuant to section 47 of the *Act*, the Tenant had ten days to dispute the Notice. I find the Tenants had until October 18, 2018, to file their application to dispute the Notice. The Tenants filed her application on October 15, 2018, within the statutory time limit.

Section 47 of the *Act* provides that a landlord may end a tenancy where the tenant is repeatedly late paying rent. The Residential Tenancy Policy Guideline #38 Repeated Late Payment of Rent, gives further guidance stating:

**Residential Tenancy Policy Guideline #38. Repeated Late Payment of Rent**

The Residential Tenancy *Act* provides that 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.

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.

In this case, I accept the sworn testimony of both parties that the Tenants have paid their rent late four times in the last five months. I find that this is a sufficient number of late rent payments to justify the Notice issued by the Landlord.

Therefore, I dismiss the Tenant's application to cancel the Notice issued on October 8, 2018.

Section 55 of the *Act* states that a landlord may request an order of possession if a notice to end the tenancy has been given by the landlord and the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

**Order of possession for the landlord**

**55** (1) 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

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

In issuing an Order of Possession pursuant to section 55, I must first be satisfied that the Notice to end tenancy complies with section 52 of the *Act*. I have carefully reviewed all the documentary evidence, and oral testimony and I find that the Landlord signed the

Notice he issued but that he put the incorrect date with his signature. I find the signature date of the Landlord and the effective date of the notice to be the same dates.

Section 53 of the *Act* provide for incorrect effective dates to be automatically changed.

**Incorrect effective dates automatically changed**

**53** (1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.

(2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

Pursuant to section 53, I find that the correct effective date of this Notice is December 31, 2018.

As I have dismissed the Tenant's application and I have corrected the effective date of the Notice, I find the Notice is valid. Pursuant to section 55 of the *Act*, I am required to grant the landlord an order of possession to the rental unit. Therefore, I grant the Landlord and order of possession effective not later than 1:00 p.m. on December 31, 2018. The Tenants are cautioned that the costs of such enforcement are recoverable from the Tenant.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenants were not successful with their application, I find the Tenants are not entitled to recover the filing fee from the Landlord.

Conclusion

The Tenants' Application to cancel the Notice, issued on October 8, 2018, is dismissed. I find the Notice is valid and complies with the Act.

I grant an **Order of Possession** to the Landlord effective not later than 1:00 p.m. on December 31, 2018. 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 27, 2018

---

Residential Tenancy Branch