



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OLC, FFT

### Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution filed on November 12, 2018, wherein the Tenant sought to cancel a 1 Month Notice to End Tenancy for Cause issued on November 6, 2018 (the "Notice"), an Order that the Landlord comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, or the tenancy agreement, and to recover the filing fee.

The hearing was conducted by teleconference at 9:30 a.m. on December 20, 2018.

Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matters

The parties confirmed their email addresses during the hearing. The parties further confirmed their understanding that this Decision would be emailed to both parties and that any applicable Orders would be emailed to the appropriate party.

### Issues to be Decided

1. Should the Notice be cancelled?
2. Should the Landlord be ordered to comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, or the tenancy agreement,
3. Should the Tenant recover the filing fee?

### Background and Evidence

*Residential Tenancy Branch Rules of Procedure—Rule 6.6* provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, even though the Tenant applied for dispute resolution and is the Applicant, the Landlord presented their evidence first.

The tenancy agreement indicated that this tenancy began October 1, 2013. Monthly rent was initially \$400.00 per month payable on the first of the month. The Landlord testified that the current rent is \$420.00 per month.

The Landlord provided in evidence copies of cheques written by the Tenant for rent dated as follows:

- December 3, 2017;
- January 4, 2018;
- February 3, 2018;
- March 2, 2018;
- July 2, 2018; and,
- August 2, 2018.

The Landlord testified that the Tenant paid the November rent on November 3, 2018. This was also confirmed in a document titled “Statement of Account”. Following this late payment, and on November 6, 2018 the Landlord issued the Notice.

The Landlord's agent testified that the Notice was served on the Tenant by posting on the door on November 6, 2018.

For reasons which will be set out in my Decision, I did not require any evidence from the Landlord with respect to the Tenant's request for an order that the Landlord comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, or the tenancy agreement,

In response to the Landlord's testimony the Tenant testified as follows. He confirmed that the tenancy began October 12, 2013. He also confirmed that his monthly rent was \$400.00, payable on the first of the month, which was increased to \$420.00.

The Tenant confirmed the dates of payment of rent as set out in the cheques provided by the Landlord.

In terms of his November 2018 payment, the Tenant stated that the Landlord "actually opened the door" on November 2 such that he was able to pay rent. The Tenant stated that the Landlord refused to open the door prior to that date such that he could not pay on time.

The Tenant confirmed that the Landlord has a mail slot, but he always gives his rent payment (of cash or cheque) to the Landlord directly, or the Landlord's spouse by handing it to them directly.

### Analysis

After consideration of the evidence before me, the testimony of the parties and on a balance of probabilities I find as follows.

I find, based on the tenancy agreement in evidence, as well as the undisputed testimony of the parties, that rent is payable on the 1<sup>st</sup> of the month.

The undisputed evidence was that the Tenant paid rent late on the following dates:

- December 3, 2017;
- January 4, 2018;
- February 3, 2018;
- March 2, 2018;

- July 2, 2018; and,
- August 2, 2018.

I also find the Tenant was late paying the November 2018 rent.

The Tenant suggested that he was late paying rent because the Landlord would not open the door to receive the payment. The Tenant is reminded that it is a Tenant's responsibility to pay rent when it is due as per section 26 of the *Act* and the tenancy agreement. Further, in this case the Tenant stated that the Landlord has a mail slot such that I find the Tenant could have placed his rent in the Landlord's mail slot on the 1<sup>st</sup>. In any event, the evidence confirms that the rent cheques were dated after the first day of the month, contrary to the tenancy agreement.

A Landlord may end a tenancy for repeated late payment of rent pursuant to section 47(1)(b) which reads 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;

..

*Residential Tenancy Branch Policy Guideline 38—Repeated Late Payment of Rent* provides that three late payments are the minimum number sufficient to justify a notice under these provisions.

In this case, I find that the Landlord has proven the Tenant has been late paying rent seven times in the past year and as such I find the Landlord has met the burden of proving the reasons for issuing the Notice.

The Tenant's Application to cancel the Notice is dismissed. The tenancy shall end on December 31, 2018 as per the effective date of the Notice. **The Landlord is granted an Order of Possession effective December 31, 2018.** The Order must be served on the Tenant and may be filed and enforced in the B.C. Supreme Court.

As the tenancy is ending, I dismiss the Tenant's request for an Order that the Landlord comply with the *Act* the *Regulation* or the tenancy agreement.

Similarly, as the Tenant has been unsuccessful in his application, his request to recover the filing fee is denied.

Conclusion

The Tenant's Application is dismissed in its entirety.

The Landlord is granted an Order of Possession effective 1:00 p.m. on December 31, 2018.

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: December 20, 2018

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Residential Tenancy Branch