



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, CNR, DRI

### Introduction

On January 2, 2018, the Tenants 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”) and seeking to dispute a rent increase pursuant to Section 41 of the *Act*.

On January 16, 2019, the Tenants amended their Application cancel a 10 Day Notice to End Tenancy for Unpaid Rent.

Both the Tenants and the Landlord attended the hearing. All in attendance provided a solemn affirmation.

The Tenants advised that they served the Landlord with the Notice of Hearing package and evidence by registered mail on January 3, 2019 and the Landlord confirmed receipt of this. The Tenants also advised that they served the Landlord their amendment by hand on January 16, 2019 and the Landlord confirmed receiving 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, evidence, and amendment.

The Landlord advised that she served the Tenants with her evidence by hand on January 25, 2019 and the Tenants confirmed receipt of this. As service of this evidence complies with the time frame requirements of Rule 3.15 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering my 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

- Are the Tenants entitled to have the Notice cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Are the Tenants entitled to have the 10 Day Notice to End Tenancy for Unpaid Rent cancelled?
- Was there an illegal rent increase contrary to the *Act*?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that a tenancy agreement was signed on or around April 1, 2018 and rent was established at \$1,200.00, due on the first day of each month. A security deposit was not paid.

The Landlord stated that she served the Notice to the Tenants by hand on December 27, 2018 and the Tenants confirmed receipt of this. The reason the Landlord served the Notice is because the “Tenant is repeatedly late paying rent.” The effective date of the Notice was January 31, 2019.

The Landlord advised that the Tenants would either pay rent by depositing it into her account or it was paid by the ministry. She referred to a rent ledger that she had submitted as documentary evidence outlining the Tenants’ rent payment history. She stated that rent was continuously paid late, and she advised that April 2018 rent was

paid on April 30, 2018, that May 2018 was not paid at all, and that June 2018 rent was paid on June 15 and June 21, 2018. She reiterated that in addition to these payments, the Tenants consistently paid rent late, as per her ledger.

The Tenant advised that the last instance of paying rent late was in August 2018, that he has been late paying rent a “few times”, and that he has been late paying rent a “couple of times for sure”. He advised that he had been paying rent in cash and that he “ran into trouble” so he had coordinated ministry assistance payments to commence as of September 2018. He confirmed that he paid \$550.00 towards rent for April 2018, but he “can’t confirm or deny” that any money was paid for May 2018 or June 2018 rent. He advised that he received a 10 Day Notice to End Tenancy for Unpaid Rent and that he took this to the ministry to receive assistance with rental payments. He stated that he has not been late paying rent for about five months and that he believed that he had an understanding with the Landlord that the tenancy would not end because he has paid rent consistently over this time.

### 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 Tenants to pay all of the rent by the first of each month. While the Tenant advised that he was confused by the Landlord’s records of rent payments, he provided testimony confirming that he had paid rent late at least twice since April 2018 and he provided uncertain testimony with respect to the timeliness of other rent payments. As well, he stated that he received a 10 Day Notice to End Tenancy for Unpaid Rent that he took to confirm his eligibility for assistance. As he advised that his assistance started in September 2018, I find this supports the likelihood that there was a further late rental payment in July or August 2018.

On the contrary, I have documentary evidence, including bank statements, from the Landlord demonstrating that the Tenants have been late paying rent at least three times since April 2018. When this evidence is weighed against the Tenant’s confirmation of paying rent late at least twice since April 2018 and his wavering, uncertain testimony and additional late payments, I am satisfied that the Landlord’s evidence is a more accurate portrayal, on a balance of probabilities. Consequently, I am satisfied that there is a more likely than not 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, the Order of Possession takes effect at **1:00 PM on February 28, 2019**.

As the tenancy is ending based on the One Month Notice to End Tenancy for Cause, I do not find that it is necessary to consider the other issues in the Tenant’s Application and I dismiss them in their entirety.

Conclusion

I dismiss the Tenant's Application and uphold the Notice. I grant an Order of Possession to the Landlord effective at **1:00 PM on February 28, 2019 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: February 5, 2019

---

Residential Tenancy Branch