



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FFT

### Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”) and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Tenant and two agents for the Landlord (the “Landlord”) were present for the duration of the teleconference hearing. The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenant’s evidence. The Tenant confirmed receipt of a copy of the Landlord’s evidence. Neither party brought up any issues regarding service.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Issues to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled?

If the One Month Notice to End Tenancy for Cause is upheld, is the Landlord entitled to an Order of Possession?

Should the Tenant be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

### Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy began on August 1, 2014. Current rent is \$997.60, due on the first day of each month. A security deposit of \$462.50 and a pet damage deposit of \$462.50 were paid at the outset of the tenancy. The tenancy agreement submitted into evidence was signed on March 1, 2017 and confirms the deposit amounts paid at the start of the tenancy.

The Landlord provided testimony that a One Month Notice was posted on the Tenant's door on January 8, 2019. The One Month Notice was submitted into evidence and states the following as the reasons for ending the tenancy:

- Tenant is repeatedly late paying rent
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

Further details were provided on the notice as follows:

*Tenant has had written notice on several occasions that she needs to pay rent on the 1<sup>st</sup> of the month when it is due.*

The effective end of tenancy date of the One Month Notice was stated as February 28, 2019.

The Landlord provided testimony that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") in January 2019, which was cancelled after the Tenant paid the outstanding rent. However, as rent has been paid late numerous times since the start of the tenancy, the Landlord stated that they served the Tenant with the One Month Notice.

The Landlord submitted an account ledger with the late payments highlighted. The ledger indicates late rent payments in 2015, 2016, 2017, 2018 and 2019. The Landlord stated that in 2018 the Tenant paid rent late in January, February, July, October and December. In 2019, the Landlord stated that rent was paid late in January and February 2019.

The Landlord provided testimony that many 10 Day Notices had been provided to the Tenant when rent was not paid as due on the first of the month. They also noted that as the Tenant after the Tenant had many cheques returned as non-sufficient funds, they required that she pay rent in person instead of providing post-dated cheques. The Landlord was unsure of when this requirement was implemented but stated that it was a few years ago.

The Landlord testified that while the Tenant asked for another chance, they have provided numerous chances over the years and rent continues to be paid late regularly. They further stated that due to many 10 Day Notices that were served to the Tenant, she should have understood the importance of paying the rent on time. In their written submissions, the Landlord stated that the Tenant has received approximately 25-30 10 Day Notices.

The Landlord also noted that in 2018 the Tenant proposed an agreement to pay the rent on time, which was not followed. The Landlord submitted a letter from the Tenant dated February 6, 2018 in which the Tenant requests that the tenancy continue and proposes that she will have an automatic withdrawal from her bank account two weeks prior to when rent is due.

In another letter from the Tenant to the Landlord dated February 13, 2018 the Tenant makes the same proposal and notes that she had not previously understood the seriousness of the late rent payment as the previous agents did not indicate that this was an issue. In a written statement submitted into evidence, the Landlord stated that the Tenant has sent them six letters asking for another chance and that the issue with late payment of rent has continued.

The Tenant confirmed receipt of the One Month Notice as posted on her door on January 8, 2019. The Tenant testified that she had not understood the seriousness of paying the rent late. She confirmed that she has received numerous 10 Day Notices, including many in 2017 and one in January 2019.

However, the Tenant noted that after receipt of the notices she would pay the rent as well as the late payment fee and thought that the issue was resolved. The Tenant further stated that it is difficult to pay the rent in person due to her work schedule and the office hours of the Landlord's agent. The Tenant stated that now that the Landlord is able to receive online payments, paying the rent on time will not be an issue.

The Tenant agreed that rent was paid late many times in 2017 and stated that she did not understand the seriousness of paying the rent on time. She also stated that she always paid the rent within 10 days. The Tenant also agreed that rent was paid late in July 2018, December 2018 and January 2019. She disagreed as to February 2019 which she stated was paid on February 1, 2019. The Tenant testified as to why rent was late in these months due to being away, or not being able to make it to the office in time due to work.

The Tenant stated that she received an eviction notice in January 2018, but that an agreement was reached for the notice to be cancelled. The Tenant stated that she did not receive a 10 Day Notice for the late payment in July 2018 or December 2018 so did not think that the late payments for these months had been an issue.

The Tenant submitted a written statement as evidence dated January 17, 2019. In the written submission the Tenant notes that she had thought that paying the rent within 10 days after receipt of a 10 Day Notice would mean there was no further issue. The Tenant also noted that the Landlord's requirement to pay rent in person at the office has made it difficult to avoid late rent payments due to the office hours coinciding with her own work hours.

### Analysis

Section 47(4) of the *Act* states that a tenant has 10 days in which to dispute a One Month Notice. As the notice was posted on the Tenant's door on January 8, 2019 and she filed the Application for Dispute Resolution on January 17, 2019, she applied within the 10-day timeframe provided under the *Act*. As such, I find that the matter before me is whether the reasons for the One Month Notice are valid.

As stated in rule 6.6 of the *Rules of Procedure*, when a tenant applies to cancel a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, that the reasons for the notice are valid.

The One Month Notice was served to the Tenant pursuant to Section 47(1)(b) regarding repeated late payment of rent and Section 47(1)(h) regarding a breach of a material term of the tenancy agreement. The Landlord testified that both grounds stated on the notice were due to the Tenant paying rent late.

I refer to *Residential Tenancy Policy Guideline 38: Repeated Late Payment of Rent* which states the following:

*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. 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*

*A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.*

*In exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.*

I accept the evidence before me that the Tenant has paid rent late numerous times since the start of the tenancy. Although the parties were not in agreement as to all of the late payments noted by the Landlord, they were in agreement that rent was paid late numerous times prior to 2018, as well as in July 2018, December 2018 and January 2019.

The three most recent late rent payments would be sufficient to end the tenancy for repeated late payment; however, I also find sufficient evidence to establish that there were far more than three times when rent was paid late. The account ledger submitted by the Landlord has highlighted over 20 times that rent was paid late.

As noted in Policy Guideline 38, consideration may be given to exceptional circumstances for why the rent was paid late. While the Tenant testified as to why the rent was paid late recently, such as being out of town, I do not find that there were exceptional circumstances that prevented rent from being paid on time.

The Tenant also stated that she did not understand the seriousness of the issue or that the Landlord may pursue an eviction. She also stated her belief that if she paid the rent

as well as the late payment fee, there would be no concerns. However, I find that the Tenant was well aware that rent was due on the first day of the month, as agreed upon in the signed tenancy agreement and as confirmed through service of 10 Day Notices and other correspondence with the Landlord regarding payment of rent. Both parties have a duty to know their rights and responsibilities under the *Act*, such as Section 26 of the *Act*, which states that a tenant must pay rent as due as per the tenancy agreement.

The Tenant also testified as to the difficulty in paying rent on time due to the requirement to pay in person at the office. However, I accept the testimony of the Landlord that this requirement was put in place due to receiving many cheques from the Tenant that were returned as non-sufficient funds, which was also noted on the account ledger.

As such, I find that this was not an arbitrary requirement put in place by the Landlord and instead find that it was implemented due to the actions of the Tenant. I also note that the requirement to pay rent in person did not stop the Tenant from paying rent early to ensure she was able to attend the office prior to the first day of each month.

I find that there have been more than three repeated late payments of rent and that there were no exceptional circumstances that resulted in the most recent late rent payments. As such, I find that the Landlord was justified in serving the Tenant with a One Month Notice for repeated late payment of rent and find that the reasons for the notice are valid. The Tenant's application to cancel the One Month Notice is dismissed, without leave to reapply.

Upon review of the One Month Notice, I find that the form and content complies with Section 52 of the *Act* and therefore, pursuant to Section 55(1) of the *Act*, the Landlord is entitled to an Order of Possession. The Landlord is granted an Order of Possession effective on March 31, 2019 at 1:00 pm.

As the Tenant was not successful in her application to cancel the One Month Notice, I decline to award the recovery of the filing fee paid for the Application for Dispute Resolution.

Conclusion

The Tenant's application is dismissed, without leave to reapply.

I grant an Order of Possession to the Landlord effective **March 31, 2019 at 1:00 pm.**

This Order must be served 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: March 01, 2019

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Residential Tenancy Branch