



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes:** CNC FFT

### Introduction

This hearing dealt with the tenant's application pursuant to to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

ES ("landlord") appeared as agent for the landlord in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application"). In accordance with section 89 of the *Act*, I find the landlord duly served with the tenant's Application. Both parties confirmed receipt of each other's evidentiary materials, which were duly served in accordance with section 88 of the *Act*.

The tenant acknowledged receipt of the 1 Month Notice to End Tenancy for Cause, with an effective date of March 31, 2019 (the 1 Month Notice), which was personally served to him on February 20, 2019. Accordingly, I find that the 1 Month Notice was duly served to the tenant in accordance with section 88 of the *Act*.

At the beginning of the hearing the landlord requested that the proper name of the landlord be added to the application. As neither party was opposed, the landlord's name was amended to include the proper name of the landlord.



**Issue(s) to be Decided**

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to recover the filing fee for this application from the landlord?

**Background and Evidence**

This month-to-month tenancy began in August of 2014. The landlord testified that monthly rent was \$960.00 as of January 2018, but increased to \$980.00 as of February 1, 2019. The tenant disputes that he had ever received a Notice of Increase, and testified that from his knowledge rent was set at \$960.00 per month. The tenant currently still resides in the rental suite.

The landlord served the notice to end tenancy dated February 20, 2019 providing the following grounds:

1. The tenant is repeatedly late paying rent

The tenant did not dispute that he was late in his rent payments, but testified that he was given permission to do so by the landlord's agent ZD. The tenant testified that ZD gave him verbal permission to make his payments late, as evidenced by the history of late rent payments and the fact that the landlord has not evicted him. The landlord provided an evidentiary package to support the history of repeated late rent payments, which included detailed statements, 10 Day Notices to End Tenancy for Unpaid Rent, and a warning letter to the tenant dated June 15, 2018.

The landlord disputes that any agreements were ever made, verbal or written, and that the landlord had always communicated to the tenant the expectation that he was to make all payments on time as per the tenancy agreement and the *Act*. The landlord testified that they were lenient and did not evict the tenant as they were sympathetic landlords who did not want to end the tenancy unless it was a last resort. The landlord testified that the issuance of the 10 Day Notices, and final warning letter to the tenant shows that they did not give permission to the tenant to pay his rent late, and that the tenant was expected to make his payments on time.



## **Analysis**

Section 47(1) of the *Act* allows a landlord to end a tenancy for cause for any of the reasons cited in the landlord's 1 Month Notice.

The landlord is requesting an Order of Possession on the grounds of repeated late rent payments, which the tenant did not dispute, but stated was done so with the permission of the landlord.

The tenant expressed concern that this tenancy should not end on the grounds of repeated late rent payments when it has been implied by the landlord that late payments would be accepted. The tenant's testimony was that the ongoing acceptance of his late rent payments implied consent. The tenant also testified that the landlord's agent ZD had given him consent to make his payments late.

Residential Tenancy Policy Guideline #11 states the following about express and implied waivers:

*"There are two types of waiver: express waiver and implied waiver. Express waiver arises where there has been a voluntary, intentional relinquishment of a known right. Implied waiver arises where one party has pursued such a course of conduct with reference to the other party so as to show an intention to waive his or her rights. Implied waiver can also arise where the conduct of a party is inconsistent with any other honest intention than an intention of waiver, provided that the other party concerned has been induced by such conduct to act upon the belief that there has been a waiver, and has changed his or her position to his or her detriment. To show implied waiver of a legal right, there must be a clear, unequivocal and decisive act of the party showing such purpose, or acts amount to an estoppel...."*

*In order to be effective, a notice ending a tenancy must be clear, unambiguous and unconditional."*

As noted above, a notice to end tenancy must be clear, unambiguous and unconditional. This extends to the terms of a tenancy, including how and when payments must be made. Accepting late rent payments on multiple occasions could possibly imply the landlord's consent to these late rent payments.

Ongoing acceptance of late rent payments without properly informing the tenant in writing that these payments were considered late, and could possibly be considered a breach of the tenancy agreement and the *Act*, would contribute to the ambiguity of the



terms of the tenancy. However, I find that in this case the landlord had provided detailed evidence to support that despite the fact that they had accepted these late rent payments, they had always communicated to the tenant the expectation that he make his payments on time, or he may be subject to possible eviction on the basis of these late rent payments. I find that the landlord was clear in communicating to the tenant the terms of the tenancy, and that there was no ambiguity or implied waiver despite the acceptance of the late rent payments as evidenced by the numerous notices and final warning letter to the tenant.

The tenant also testified that the landlord had given him permission to make his rent payments late. The landlord disputes that they had ever given the tenant permission, verbal or written, to make late rent payments. In light of the conflicting testimony, I am not satisfied that the tenant had provided sufficient evidence to support that he was ever given permission to make repeated rent payments to the landlord.

I find that the repeated late rent payments meet the criteria for sufficient cause to end this tenancy under section 47(1)(b) of the *Act*. Therefore, I am dismissing the tenant's application to cancel the 1 Month Notice dated February 20, 2019, without leave to reapply.

**Section 55(1)** of the *Act* reads as follows:

**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.

A copy of the 1 Month Notice was submitted for this hearing, and I find that the landlord's 1 Month Notice complies with section 52 of the *Act*, which states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.



Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the effective date of the 1 Month Notice, March 31, 2019. As the tenant has not moved out, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

As the tenant was not successful with his application, his application to recover the filing fee is also dismissed without leave to reapply.

### **Conclusion**

I dismiss the tenant's application entire without leave to reapply. I find that the landlord's 1 Month Notice is valid and effective as of March 31, 2019.

I grant an Order of Possession to the landlord effective two **days 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: April 9, 2019

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Residential Tenancy Branch