



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPC

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord (“Application”) filed under the *Residential Tenancy Act*, (the “Act”), for an order of possession of the rental unit.

The Landlords, T.T. and B.T., attended the hearing, but no one attended on behalf of the Tenant. As the Tenant did not attend the hearing, service of the Application was considered.

The Residential Tenancy Branch (“RTB”) Rules of Procedure (“Rules”) states that the respondent must be served with a copy of the application for dispute resolution and documentary evidence submitted by the applicant. The Landlord testified that the Application and documentary evidence were sent to the Tenant by registered mail on March 1, 2019. The Landlord provided a Canada Post tracking number, as evidence of service, and with the permission of the Landlord, I checked the Canada Post site. The Canada Post tracking information indicated that the Landlord’s package was accepted by the post office on March 1, 2019, that a notice card was left at the rental unit on March 5, 2019, and that a final notice card was left at the rental unit on March 10, 2019. The website indicates that Canada Post then sent the unclaimed package back to the sender.

Section 90 of the Act determines that a document served via registered mail is deemed to have been served five days later after being mailed. I find that the Tenant was deemed served in accordance with the Act.

The Landlords gave affirmed testimony and were provided with the opportunity to present their evidence orally and in documentary form, and to make submissions to me.

### Issues to be Decided

Is the Landlord entitled to an order of possession?

### Background and Evidence

The Landlords said that a fixed-term tenancy ran from November 1, 2015 until July 31, 2017, at which time it became a month-to-month tenancy. They said the monthly rent is \$1,500.00, due on the first day of each month, and the Tenant paid a \$700.00 security deposit and no pet damage deposit.

The Landlords said they served the Tenant with a One Month Notice to End Tenancy for Cause (the "Notice"), by mailing it to the Tenant via registered mail on January 15, 2019. The Landlords submitted a copy of the Notice, which was dated January 15, 2019, was signed, set out the rental unit address, had an effective date of February 21, 2019. The eviction ground set out on the Notice was that the Tenant was repeatedly late paying rent.

The Notice explained that the Tenant had ten days to dispute it. The Notice further explained that if it is not disputed within the ten days, the Tenant is presumed to accept the Notice and must move out of the rental unit by the date specified in it.

The Landlord said that the Tenant was late paying rent in the months leading up to the Notice, as follows:

October 2018:

- paid \$1,200.00 on October 2;
- paid an extra \$100.00 later that day;
- paid \$50.00 on October 3<sup>rd</sup>;
- paid \$100.00 on October 5<sup>th</sup>.

November 2018:

- paid \$750.00 on November 2; and
- paid another \$750.00 later that day.

December 2018:

- paid \$950.00 on December 3<sup>rd</sup>;
- paid \$550.00 on December 5<sup>th</sup>.

January 2019:

- paid \$800.00 on January 4<sup>th</sup>;
- paid \$100.00 on January 5<sup>th</sup>;
- paid \$600.00 on January 18<sup>th</sup>.

### Analysis

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

I find that the Tenant was repeatedly late paying rent. Section 47 (1) (b) of the Act states that 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”.

Policy Guideline 38 addresses “Repeated Late Payment of Rent” and states:

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 the matter before me, the Landlord gave evidence that the Tenant has been late with rent at least four times within the last year. I find on a balance of probabilities that the Landlord has met the burden of proof in this matter.

A landlord who serves a one month notice must do so in compliance with section 47 of the Act. Section 47 (2) states:

- (2) A notice under this section must end the tenancy effective on a date that is
- (a) not earlier than one month after the date the notice is received, and
  - (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

As noted above, the Landlords served the Tenant with the Notice on January 15, 2019, with a vacancy effective date of February 21, 2019. The Parties agreed that the rent was due on the first day of each month. According to section 47 (2) (b), the effective date should have been on February 28, 2019, not February 21, 2019. However, pursuant to section 53 of the Act, an incorrect effective date is automatically changed to the earliest date that complies with the Act. Accordingly, this was not a fatal error on the Notice. I find the Notice effective date was corrected to February 28, 2019.

The Tenant did not apply to dispute the Notice, and therefore, is conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. Further, Policy Guideline 38 sets out that three instances of late payments of rent over a recent period of time constitutes repeated late payment of rent.

Based on the Tenant's repeated late rent payments, I find that the Landlord is entitled to an Order of Possession, pursuant to section 55 of the Act, effective on April 30, 2019 at 1:00 p.m. This order may be filed in the Supreme Court and enforced as an order of that Court. The **Tenant is cautioned** that costs of such enforcement are recoverable from the Tenant, if they are necessary.

### Conclusion

The Tenant was repeatedly late paying rent to the Landlords and failed to dispute the Notice. The Tenant is presumed under section 47 of the Act to have accepted that the tenancy ended on the effective date of the notice to end tenancy.

Pursuant to section 55 of the Act, I grant the Landlords an Order of Possession to be effective on April 30, at 1:00 p.m. This Order should be served on the Tenant as soon as possible. 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 11, 2019

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Residential Tenancy Branch