



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

CNC

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on April 26, 2019. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- Cancellation of the Landlord's 1 Month Notice to End Tenancy for Cause (the Notice) pursuant to section 47.

The Tenant and the Landlord both attended the hearing and provided testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The Tenant confirmed receipt of the Landlord's documentary evidence. The Tenant did not provide any documentary evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure and evidence that is relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's Notice cancelled?
  - If not, is the Landlord entitled to an Order of Possession?

### Background and Evidence

The Landlord issued the Notice because the Tenant is repeatedly late paying rent. The Landlord also selected other grounds on the Notice. However, this hearing focused on issues surrounding the repeated late payment of rent. The Tenant acknowledged receipt of the Notice on February 28, 2019. Both parties agree that rent is due on the first of the month in the amount of \$1,100.00.

The Landlord testified that since May of 2018, the Tenant has been late paying rent at least 8 times, by between 2- 9 days. A schedule of the late payments was provided into evidence. The Tenant acknowledged paying rent late on these months, but stated that she has been going through a difficult time.

### Analysis

In the matter before me, the Landlord has the onus to prove that the reason in the Notice is valid.

The Landlord entered into written evidence a copy of her **February 28, 2019**, Notice. In that Notice, the Landlord cited several reasons for ending the tenancy. However, my analysis will focus on the following reason for the issuance of the Notice:

*Tenant is repeatedly late paying rent.*

Both parties agree that rent is due on the first of the month. Further, at the time the Notice was issued in February of 2019, both parties agree that the Tenant had been late paying rent 8 times since the previous May (2018). I turn to the following:

#### *Residential Tenancy Policy Guideline #38 – Repeated Late Payment of Rent*

*The Residential Tenancy Act and the Manufactured Home Park Tenancy Act both provide that 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.

*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.*

Given that the Tenant had paid rent late 8 times within the last year, at the time the Notice was issued, I find the Landlord has sufficient cause to issue the Notice. The Tenant's application to cancel the Notice is dismissed. The tenancy is ending, under the Notice, as described below.

Under section 55 of the *Act*, when a Tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession. Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

I find that the Notice complies with the requirements of form and content. The Landlord is entitled to an order of possession. I find the Landlord is entitled to an order of possession effective **two days after service** on the Tenant.

As the Tenant was not successful with her application, I decline to award her recovery of the filing fee.

#### Conclusion

The Tenant's application to cancel the Notice is dismissed.

The Landlord is granted an order of possession effective **2 days** after service on the Tenant. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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 26, 2019

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Residential Tenancy Branch