



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OLC, FF

### Introduction

This hearing dealt with the tenant's application pursuant 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;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided testimony. Both parties confirmed receipt of the notice of hearing package and the submitted documentary evidence. As both parties have attended and confirmed receipt of the submitted packages, I am satisfied that both parties have been sufficiently served as per section 90 of the Act.

### Preliminary Issue(s)

At the outset, the tenant's request for the landlord to comply was clarified. The tenant indicated that he wished for the landlord to properly follow the end of tenancy policy of the Residential Tenancy Branch. The tenant indicated that this request was made in error and requests that it be cancelled as the tenant wished to proceed on the request to cancel the 1 month notice. The hearing shall proceed on the remaining two issues listed below.

### Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 month notice?  
Is the tenant entitled to recovery of the filing fee?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on May 1, 2018 on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated April 28, 2018. The monthly rent is \$1,644.00 payable on the 1<sup>st</sup> day of each month.

Both parties confirmed that the landlord served the tenant on May 6, 2019 with the 1 Month Notice dated May 5, 2019 by posting it to the rental unit door. The 1 Month Notice sets out an effective end of tenancy date of June 11, 2019 and that it was being given as:

- the tenant is repeatedly late paying rent.

No details of cause were provided on the notice.

The tenant confirmed receipt of the notice posted to his door on May 6, 2019.

The landlord claims that the tenant has been repeatedly late paying rent for the below noted months.

August 2018  
September 2018  
February 2019  
April 2019  
May 2019

The tenant has disputed this claim stating that he has not been late paying rent, but that the landlord has been late collecting the rent. The tenant's primary issue that was repeatedly brought forward that he has had no issues with the tenancy for the last 6 years and that he feels the landlord is intent on ending the tenancy so that he could re-rent the unit at a higher rent.

The landlord claims that the tenant was late paying rent for August 2018 as shown in the submitted copy of a returned cheque from the bank which shows a post-dated

cheque dated August 2, 2018. The landlord has noted that rent is due on the 1<sup>st</sup> day of each month and this cheque was returned as “NSF” as shown by the submitted copy.

The landlord claims that the tenant was late paying rent for September 2018 as shown in the submitted copy of a returned cheque from the bank which shows a post-dated cheque dated September 3, 2018. The landlord has noted that rent is due on the 1<sup>st</sup> day of each month. The landlord confirmed that the cheque was returned as “NSF”.

The landlord claims that the tenant was late paying rent for February 2019 as shown in the submitted copy of a returned cheque from the bank which shows a post-dated cheque dated February 2, 2019. The landlord has noted that rent is due on the 1<sup>st</sup> day of each month and that the cheque was returned as “NSF”.

The landlord claims that the tenant was late paying rent for May 2019 as shown in the submitted copy of a letter from the landlord’s bank dated June 15, 2019 regarding the tenant’s rent cheque as it was returned from the bank which shows a processing date of May 8, 2019. The landlord has noted that rent is due on the 1<sup>st</sup> day of each month. The landlord also noted that a copy of the returned cheque was dated May 3, 2019.

In all of these circumstances the landlord has confirmed that rent is due on the 1<sup>st</sup> day of each month. Each cheque that was returned by the bank “NSF” was post-dated by the tenant after when the rent was due even though in some cases the cheques were received by the landlord on the 1<sup>st</sup> day of the month.

The tenant has argued that the landlord is at fault on each occasion when the rent was collected late due to the landlord’s schedule.

The landlord disputes the tenant’s claims stating that a 10 Day Notice was served to the tenant in September 2018, but that a copy of the notice was not submitted as the agent for the landlord failed to provide the records to the landlord. The landlord stated that since November 2018, the landlord began overseeing the property himself as the agent was no longer employed. The landlord stated that numerous messages between the landlord and tenant warn the tenant that rent was due on the 1<sup>st</sup> day of each month as per the signed tenancy agreement and that late rent would not be accepted. The landlord has submitted several copies of messages outlining these conversations.

### Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

In this case, I accept the undisputed testimony of both parties and find that the landlord did properly serve the tenant with the 1 month notice dated May 5, 2019. I also find that as the stated effective end of tenancy date is shown as June 11, 2019 that this is an incorrect interpretation of the "1 month notice" and correct the date to July 1, 2019 as the landlord served the tenant on May 5, 2019 by posting it to the rental unit door.

The landlord has claimed that the tenant has been repeatedly late paying rent and provided submissions and evidence to show that rent is due on the 1<sup>st</sup> day of each month and that the tenant was late paying rent for:

August 2018  
September 2018  
February 2019  
April 2019  
May 2019

However, the tenant has argued that for the last 6 years he has been paying rent in this manner because that is when the landlord's agent would collect monthly rent and the tenant cannot be responsible for when the landlord chooses to collect rent. Although the tenant disputed the landlord's claims, the tenant failed to provide any evidence to the contrary. As such, I find based upon the submitted evidence of the landlord that the landlord has shown that the tenant has been repeatedly late paying rent as claimed.

The landlord has also claimed that 1 prior 10 Day Notice for Unpaid Rent was issued to the tenant. The tenant disputed that no such notice was received. However, no evidence of the actual 10 Day Notice was provided, except for a photograph of a piece of paper wedge in the door jam. The landlord argued that a text message between the landlord and his agent confirms that a 10 Day Notice was issued, which is also confirmed in a later message.

The landlord has also provided undisputed evidence that although the previous agent for the landlord may have been lax in collecting rent, the landlord provided text/message evidence showing the landlord's instructions to the agent to give warning to the tenant that late rent would not be tolerated. The landlord followed up on this point by providing further text/messages dated February 10, 2019 between the landlord and the tenant detailing a lengthy message warning the tenant that rent should not be paid late and

that it was due on the 1<sup>st</sup> day of each month. I find that although the tenant's prior landlord and to some extent the current landlord were somewhat "lax" in collecting rent that notice was given to the landlord that rent was due on the 1<sup>st</sup> day of each month and that late rent would not be tolerated. I also find on a balance of probabilities that the 10 Day Notice referred to by the landlord was in fact served upon the tenant.

Based upon all of these factors, I find that the landlord has provided sufficient evidence that the tenant has been repeatedly late paying rent. The tenant's application is dismissed. The 1 month notice dated May 5, 2019 is upheld. Pursuant to section 55 of the Act, the landlord is granted an order of possession. The order of possession is to be effective on July 1, 2019.

### Conclusion

The landlord is granted an order of possession.

This order must be served upon the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and 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: June 28, 2019

---

Residential Tenancy Branch