



# 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 Tenants' Application for Dispute Resolution. A hearing by telephone conference was held on July 18, 2019. The Tenants 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 Landlords 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. Both parties confirmed receipt of each other's 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

- Are the Tenants entitled to have the Landlord's Notice cancelled?
  - If not, is the Landlord entitled to an Order of Possession?
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### Background and Evidence

The Landlords issued the Notice because the Tenants are repeatedly late paying rent. The Tenant acknowledged receipt of the Notice on May 20, 2019. Rent is \$1,500.00 per month.

The Landlords stated that the Tenants have lived in the rental unit for several years now, and they have lost their written tenancy agreement. The Landlords stated that rent was due on the first of the month at the start of the tenancy as per the written tenancy agreement. Then, after a couple of months, they made a verbal agreement with the Tenants where they could pay on the 8<sup>th</sup> of the month, to make it easier for the Tenants. The Landlords stated that rent has been late several times over the last year. More specifically, they stated that no rent has been paid for July 2019 or June 2019. They also stated that the Tenants did not pay May rent until the 17<sup>th</sup>. The Landlords provided copies of text messages to show the discussions they have over the years and to show that late rent has been an ongoing issue. The Landlords did not have a list with respect to when exactly rent had been paid for each month over the last year. However, they relied on their text message thread as evidence that it has been ongoing.

The Tenant stated that she injured herself back in late 2016, and had financial difficulties for a period of time after that. The Tenant stated that rent was never due on the first of the month and that they never had a written tenancy agreement for this. The Tenant provided differing statements regarding when rent was due, but after clarifying this with both parties, both the Landlord and the Tenant agreed that rent is due on the 8<sup>th</sup> of the month. Both parties individually stated that it has been this way for years (the parties agree that they made a verbal agreement for rent to be due on the 8<sup>th</sup> each month).

The Tenant acknowledged that they pay rent late, and stated that she paid rent as follows:

- September 2018 – paid on the 9<sup>th</sup>
- January 2019 – paid on the 11<sup>th</sup>
- February 2019 – paid on the 9<sup>th</sup>
- June and July 2019 – did not pay any rent

The Landlord stated that even after giving the Tenants until the 8<sup>th</sup> to pay, they would still be late, and they are now not being paid at all.

### Analysis

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

The Landlords entered into written evidence a copy of the Notice. In that Notice, the Landlord cited the following reason for the issuance of the Notice:

*Tenant is repeatedly late paying rent.*

The parties disagree with respect to whether or not there was a written tenancy agreement or that rent was ever due on the first of the month. I note that neither party has a copy of this written tenancy agreement. I find there is insufficient evidence of a written tenancy agreement and I find that the parties have a verbal tenancy agreement. With respect to when rent is due, I find there is insufficient evidence to show that it was ever due on the 1<sup>st</sup>, but after confirming multiple times in the hearing, both parties agreed that it was due (\$1,500.00) on the 8<sup>th</sup> each month and that they agreed to this verbally, several years ago. I find the consistent evidence before me shows that the parties made a verbal agreement a few years ago. As such, I find \$1,500.00 rent is due on the 8<sup>th</sup> of the month.

The Landlord was not prepared or able to detail exactly what dates rent was paid over the last year. However, the Landlord presented a string of text messages showing that there have been ongoing discussions about late rent payments over the years, and several times in the last year. Although the Landlord did not present clear lists of when rent was paid over the last year, the Tenant was able to clarify that she paid rent on the 9<sup>th</sup> of the month for September 2018, on the 11<sup>th</sup> of the month for January 2019, and on the 9<sup>th</sup> of the month for February 2019. The Tenant also acknowledged not paying any rent for June or July of 2019.

The Tenant stated directly, that she did not dispute that rent has been late a few times in the last year, but stated she needs more time to find a new place to move to.

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.*

Based on the testimony and evidence presented, I find the Tenants have paid rent late 3 or more times, as specified above, at the time the Notice was issued on May 20, 2019. Furthermore, the Tenants have also not paid any rent for the last 2 months, since receiving the Notice. Overall, I find the Landlords have sufficient cause to issue the Notice. The Tenants' 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 Landlords are entitled to an order of possession. I grant the order of possession effective **two days after service** on the Tenants.

As the Tenants were not successful with the application, I decline to award recovery of the filing fee.

### Conclusion

The Tenants' application to cancel the Notice is dismissed.

The Landlords are granted an order of possession effective **2 days** after service on the Tenants. This order must be served on the Tenants. If the Tenants fail 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: July 18, 2019

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Residential Tenancy Branch