



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC    FF

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on July 2, 2019 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a One Month Notice to End Tenancy for Cause, dated June 28, 2019 (the "One Month Notice"); and
- an order granting recovery of the filing fee.

The Tenant attended the hearing and was accompanied by A.G., who did not participate in the hearing. The Landlord attended the hearing and was accompanied by J.S., his daughter, who assisted with translation when necessary. The Tenant, Landlord, and J.S. provided a solemn affirmation at the beginning of the hearing.

The Tenant testified the application package was served on the Landlord by registered mail on July 10, 2019. A Canada Post registered mail customer receipt and purchase receipt were submitted in support. The Landlord acknowledged receipt of these documents. Further, the Landlord testified a documentary evidence package was served on the Tenant in person in mid-July. Although the Landlord was unable to recall the precise date, the Tenant acknowledged receipt. No issues were raised with respect to service or receipt of the above documents during the hearing. The parties were in attendance and were prepared to proceed. Therefore, pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue to be Decided

1. Is the Tenant entitled to an order cancelling the One Month Notice?
2. Is the Tenant entitled to recover the filing fee?

#### Background and Evidence

The parties agreed the tenancy began roughly 5 years ago. Rent in the amount of \$1,660.00 per month is due on the first day of each month. The Tenant paid a security deposit of \$750.00, which the Landlord holds.

The Landlord wishes to end the tenancy. Accordingly, the Landlord issued the One Month Notice, which was served on the Tenant in person on June 28, 2019. The Application confirms receipt of the One Month Notice on that date. The One Month Notice was issued on the following bases:

- Tenant is repeatedly late paying rent; and
- Tenant has allowed an unreasonable number of occupants in the unit.

The Landlord testified that the Tenant has repeatedly paid rent late. In support, the Landlord submitted numerous e-transfer statements confirming late payments as follows:

<b>Rent due date</b>	<b>Rent paid date</b>
February 1, 2017	February 3, 2017
March 1, 2017	March 3, 2017
April 1, 2017	April 2, 2017
May 1, 2017	May 2, 2017
June 1, 2017	June 3, 2017
July 1, 2017	July 4, 2017
August 1, 2017	August 3, 2017
September 1, 2017	September 2, 2017
November 1, 2017	November 2, 2017
December 1, 2017	December 2, 2017
January 1, 2018	January 2, 2018
February 1, 2018	February 2, 2018
March 1, 2018	March 2, 2018
April 1, 2018	April 3, 2018
May 1, 2018	May 2, 2018
April 1, 2018	April 3, 2018
June 1, 2018	June 3, 2018
July 1, 2018	July 3, 2018
August 1, 2018	August 3, 2018
September 1, 2018	September 2, 2018
December 1, 2018	December 2, 2018
February 1, 2019	February 2, 2019
May 1, 2019	May 2, 2019

In reply, the Tenant did not dispute that rent was paid late as alleged. She testified she would “occasionally” pay rent late when she was travelling. The Tenant testified that the Landlord never raised an issue with the late payments or provided her with notice that the late payments were a problem. She testified that the Landlord told her verbally that it was “no big deal”. In response to the Tenant’s testimony, the Landlord denied any agreement where he stated late payments were acceptable.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 47 of the *Act* permits a landlord to take steps to end a tenancy for the reasons described therein. In this case, the One Month Notice was issued on the bases identified above. Based on the testimony of the parties, I find the One Month Notice was served on and received by the Tenant on June 28, 2019.

Policy Guideline #38 provides assistance when determining whether or not a tenant has been repeatedly late paying rent. It 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. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be “repeatedly” late*

*A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.*

*In exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.*

*Whether the landlord was inconvenienced or suffered damage as the result of any of the late payments is not a relevant factor in the operation of this provision.*

[Reproduced as written.]

After careful consideration of the evidence and submissions of the parties, I find the Tenant has been repeatedly late paying rent. The parties confirmed the tenancy agreement between them requires payment of rent on the first day of each month. The Tenant did not dispute that rent has been paid late throughout the tenancy. The late payments are not occasional, as suggested by the Tenant, but chronic. With respect to the Tenant’s suggestion that the Landlord

acquiesced to the Tenant's late payments, I find there is insufficient evidence before me to conclude that the Landlord was prepared to accept late rent payments as a matter of course. The Tenant provided no documentary evidence in support of the Landlord's acceptance of late payment, and the Landlord denied any such understanding between the parties.

In light of the above, I find that the Tenant's request to cancel the One Month Notice is dismissed, without leave to reapply. When a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the *Act*, section 55 of the *Act* requires that I grant an order of possession to a landlord. Having reviewed the One Month Notice, I find it complied with section 52 of the *Act*. Accordingly, I find the Landlord is entitled to an order of possession, which will be effective two (2) days after service on the Tenant.

As the tenancy is ending based on repeated late payments of rent by the Tenant, I find it has not been necessary to consider whether or not the Tenant has allowed an unreasonable number of occupants in the unit.

#### Conclusion

The Application is dismissed, without leave to reapply.

By operation of section 55 of the *Act*, I grant the Landlord an order of possession. The order will be effective two (2) days after service on the Tenant. The order may be filed in 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: August 29, 2019

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Residential Tenancy Branch