



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Code          CNC

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on September 30, 2019 (the "Application"). The Tenant applied for an order cancelling a One Month Notice to End Tenancy for Cause (the "One Month Notice"), pursuant to the *Residential Tenancy Act* (the "*Act*").

The Tenant attended the hearing and was capably assisted by S.C., an advocate. The Landlord B.F. attended the hearing and was assisted by J.F., the Landlords' daughter. The Tenant, B.F., and J.F. provided affirmed testimony.

No issues were raised with respect to service or receipt of the documents relied upon by the parties. The parties were in attendance and were assisted by an advocate and a family member. The parties were prepared to proceed. Pursuant to section 71 of the *Act*, I find the parties were sufficiently served with these documents 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

Is the Tenant entitled to an order cancelling the One Month Notice?

### Background and Evidence

The parties agreed the tenancy began on or about September 1, 2010. Rent in the amount of \$725.00 per month is due on the first day of each month. The Tenant paid a security deposit in the amount of \$350.00 which the Landlords hold. The Tenant did not pay a pet damage deposit.

The Landlords wish to end the tenancy. Accordingly, the Landlords issued the One Month Notice, which was served on the Tenant by posting a copy to the door of the Tenant's rental unit on September 25, 2019. The Application confirms receipt of the One Month Notice on that date. The One Month Notice was issued on the following bases:

- Tenant has been repeatedly late paying rent.
- Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlords.
- Tenant or a person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.
- Tenant or a person permitted on the property by the Tenant has caused extraordinary damage to the unit or property.

With respect to the Landlords' claim regarding late payments of rent, the Tenant acknowledged that rent was paid late as summarized on a type-written document submitted into evidence by the Landlords. The summary confirms there were 8 instances of late rent payments in 2018 and 3 instances of late payments in 2019. The most recent late payment was received by the Landlord on May 2, 2019.

In light of my findings below, it has not been necessary to describe the evidence relating to the other bases for ending the tenancy in this Decision.

### Analysis

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

Section 26 of the *Act* confirms a tenant must pay rent when due under the tenancy agreement whether or not the landlord complies with the *Act*, regulation, and/or the tenancy agreement. Further, section 47(1)(b) permits a landlord to take steps to end a tenancy when a tenant has been repeatedly late paying rent.

Policy Guideline #38 provides guidance when determining whether late payments are sufficient to end a tenancy. 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.]

In this case, I find that rent is due on the first day of each month. Based on the Tenant's admission during the hearing, I also find that she has been repeatedly late paying rent. Specifically, I find the Tenant has paid rent late on 11 occasions since January 1, 2018. Although the last time rent was paid late was on May 2, 2019, I find this is not a basis to conclude the Landlords have waived reliance on section 47(1)(b) of the *Act*. This is not a case of a few late payments. Rather, the evidence confirms that roughly half of the Tenant's rent payments since January 1, 2018 have been made late. Therefore, I find that the Application 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 Landlords are entitled to an order of possession, which will be effective on November 30, 2019, at 1:00 P.M.

### Conclusion

The Application is dismissed, without leave to reapply.

By operation of section 55 of the *Act*, I grant the Landlords an order of possession. The order will be effective on November 30, 2019, at 1:00 P.M. 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: November 4, 2019

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Residential Tenancy Branch