



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing was convened as the result of the tenant's application for dispute resolution under the Residential Tenancy Act (Act). The tenant applied for an order cancelling the landlord's One Month Notice to End Tenancy for Cause (the Notice).

The tenant, his assistant, the landlord, and the landlord's three children, acting as assistants, attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, no issues were raised regarding service of the application or the other's evidence. The parties confirmed receiving the other's evidence.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all relevant evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### *Preliminary and Procedural Matters-*

At the beginning of the hearing, I was unable to clearly hear the tenant; however, I could hear his friend, who assisted him, well enough to continue the hearing. I asked the tenant's friend to re-state the tenant's testimony for the hearing and she agreed.

Additionally, I allowed the landlord's children to remain in the hearing as they were assisting their elderly mother; however, the landlord also provided parts of her own testimony.

### Issue(s) to be Decided

Should the Notice be cancelled?

### Background and Evidence

The landlord said that they were unable to find a copy of the original tenancy agreement, but testified without dispute that the tenancy began approximately 7 years ago and monthly rent is \$800.00.

The landlord's daughter, CP, explained that the monthly rent was a lower rate than they could have received as the tenant and his wife agreed to perform yard work and chores to assist the landlord.

The landlord testified in support of serving the tenant the Notice, issued pursuant to section 47 of the Act. The Notice submitted into evidence by the tenant shows that it was dated October 1, 2019, listing an effective end of tenancy date of November 5, 2019. The landlord submitted without dispute that the Notice was delivered to the tenant on that date, by personal delivery. The tenant confirmed receiving it on October 1, 2019 and filing his application in dispute of the Notice on October 10, 2019.

The cause listed on the Notice alleged as follows:

- The tenant is repeatedly late paying rent,
- The tenant has put the landlord's property at significant risk, and,
- The tenant has caused extraordinary damage to the rental unit.

The landlord said the last rent payment was three and a half years ago. CP also explained that recently, the landlord received a bill from BC Hydro as the tenant had not paid his hydro bill for the rental unit, resulting in the landlord paying almost \$900.00 for the tenant's hydro usage.

*Tenant's relevant response-*

The tenant disputed the landlord's evidence and said his last rent payment was 6½ years ago, not 3½ years ago. The tenant also submitted that the landlord has refused his rent payments and told him to use the money to get his teeth fixed and see his grandchildren.

*Landlord's response-*

The landlord denied refusing the tenant's rent payments and said that he refused to pay the monthly rent.

Analysis

Based on the foregoing, relevant evidence, and on a balance of probabilities, I find as follows:

Once the tenant disputed the 1 Month Notice in accordance with the timeline provided for under section 47 of the Act, the burden of proof reverts to the landlord to prove that the 1 Month Notice is valid and should be upheld. If the landlord fails to prove the 1 Month Notice is valid, the 1 Month Notice will be cancelled, and will have no force or effect.

In this instance, the burden of proof is on the landlord to prove one of the causes listed on the Notice.

Section 26 of the Act requires a tenant to pay rent on the day that it is due under a tenancy agreement. In this case, the undisputed evidence is that the tenant's monthly rent obligation is \$800.00.

The tenant confirmed that he had not paid rent for a substantial length of time, but at least for 3½ years.

Residential Tenancy Policy Guideline 38 provides that three late payments are the minimum number sufficient to justify a notice under these provisions.

After considering the totality of the evidence, including the tenants' own admission, I find that the landlord has submitted sufficient evidence to prove on a balance of probabilities that the tenant is repeatedly late paying rent, the first cause listed on the Notice.

I therefore dismiss the tenant's application requesting cancellation of the Notice, without leave to reapply.

As I have found that the Notice is valid on the ground that the tenant is repeatedly late in paying rent, it is not necessary for me to consider the other alleged causes.

I therefore dismiss the tenant's application requesting cancellation of the Notice, without leave to reapply, as I find the Notice is valid, supported by the evidence, and therefore, enforceable.

Under Section 55(1)(b) of the Act, if a tenant's application to cancel a Notice has been dismissed, I must grant the landlord an order of possession.

I find that the landlord is entitled to and I therefore grant an order of possession for the rental unit effective two (2) days after it is served on the tenant.

The order of possession is attached to the landlord's Decision. Should the tenant fail to vacate the rental unit pursuant to the terms of the order after it has been served upon him, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenant is advised that costs of such enforcement, such as bailiff fees, are recoverable from the tenant.

### Conclusion

For the reasons stated above, the tenant's application is dismissed, without leave to reapply.

The landlord has been issued an order of possession for the rental unit, effective two (2) days after it is served on the tenant.

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 14, 2019

---

Residential Tenancy Branch