



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PACIFIC EDGE PROPERTIES LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC, CNR, OLC, PSF, LRE, MNDC, FF

### Introduction

This was a cross-application hearing for Dispute Resolution under the *Residential Tenancy Act* (“the Act”).

On November 29, 2019, the Tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The Tenant also applied for compensation for damage or loss.

On December 19, 2019, the Landlord applied for an order of possession for the rental unit based on the issuance of a One Month Notice to End Tenancy for Cause.

The matter was set for a conference call hearing. Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties confirmed that they exchanged the documentary evidence before me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

The parties were offered an opportunity to settle the matter pursuant to section 63 of the Act; however, a settlement agreement could not be reached.

The Tenant clarified that he applied for dispute resolution with the intention to dispute the One Month Notice to End Tenancy for Cause that he received from the Landlord on November 21, 2019. The Tenant's application indicates that he is disputing a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities received on November 21, 2019. I find that the Tenant made a clerical error and it is reasonable to amend the Tenant's application to remove a dispute of the 10 Day Notice and include the dispute of the One Month Notice To End Tenancy For Cause he received on November 21, 2019.

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important matter to determine is whether or not the tenancy is ending based on a One Month Notice to End Tenancy for Cause. The Tenant's other claims are dismissed with leave to reapply.

#### Issues to be Decided

- Does the Landlord have sufficient cause to end the tenancy?
- Is the Landlord entitled to an order of possession?

#### Background and Evidence

The Landlord and Tenant testified that the tenancy began on December 1, 2015 and is on a month to month basis. Rent in the amount of \$985.00 is due to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$500.00.

The Landlord purchased the residential property in May 2019 and assumed the tenancy of the Tenant.

#### *One Month Notice to End Tenancy for Cause*

The Landlord testified that the Tenant is repeatedly late paying the rent and the Landlord is seeking to end the tenancy.

The Landlord testified that on May 3, 2019 residents of the rental property were provided with information on how to pay their rent. The Landlord testified that they were offered options of pre-authorized debit, or postdated cheques.

The Landlord testified that she met with the Tenant in June 2019 and informed him that he cannot pay rent by cash and informed him of his payment options.

The Landlord testified that the Tenant was late paying the rent for the months of June; July; August; September; October; and November 2019. The Landlord testified that the Tenant paid the rent for September; October; and November in cash at the out of town office. The Landlord testified that after issuing the One Month Notice, the Tenant has continued to pay the rent late. The Landlord testified that the rent was paid late by cheque for January 2020.

The Landlord provided the following testimony regarding late payment of rent:

<b><u>Month</u></b>	<b><u>Date Rent Paid</u></b>	<b><u>Method of Payment</u></b>
June 2019	June 4, 2019	Cash
July 2019	July 8, 2019	Cash
August 2019	August 12	Cash
September 2019	September 11, 2019	Cash at Office
October 2019	October 11, 2019	Cash at Office
November 2019	November 12, 2019	Cash at Office
January 2020	January 17, 2020	Cheque

The Landlord testified that on November 21, 2019 the Tenant was served a One Month Notice To End Tenancy for Cause. The reason for ending the tenancy within the One Month Notice is:

*Tenant is repeatedly late paying rent.*

The One Month Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 10 days after receiving it by filing an Application for Dispute Resolution at the Residential Tenancy Branch. The Tenant disputed the One Month Notice within the required timeframe.

The Tenant testified that the Landlord is trying to bully him with the intention of ending the tenancy and rent it out for a higher monthly rent. The Tenant testified that the Landlord sent out a notice to bribe occupants to use direct withdrawal. The Tenant testified that he often does not have funds to pay the rent on the 1<sup>st</sup> day of the month and that the previous Landlord was reasonable with this situation.

The Tenant testified that prior to the new Landlord purchasing the property, he was paying his rent using electronic transfer. He testified that he asked the new Landlord if they will accept the rent using e-transfer and they declined. The Tenant testified that the Landlord gave the option of pre-authorized withdrawal, post dated cheques, or cash payments to their office located out of town.

The Tenant testified that he does not want to use pre-authorized withdrawals or cheques. He testified that he wants to avoid any NSF fees if he does not have sufficient funds when the Landlord cashes the cheque. The Tenant wants to pay the rent using cash or e-transfer.

The Tenant testified that he had the rent available when it was due for June; July; September; and October. He testified that the only reason the rent was paid late is because the Landlord has changed the method for him to make payment. The Tenant testified that in order to pay by cash he needs to drive for two hours to the Landlord's out of town office mailbox.

The Tenant testified that he did not have the rent owing for August available until August 4, 2019. He testified that he did not have the rent owing for November available until November 9, 2019.

The Landlord provided testimony confirming that the Tenant asked to pay the rent using e-transfer and that the Landlord said no because the Landlords bank does not offer e-transfer. The Landlord testified that there is a resident manager at the rental property since September 2019; however, the manager is not permitted to accept payment of rent in cash. The Landlord testified that they were not aware of the arrangement the Tenant had for paying the rent with the previous Landlord. The Landlord testified that she is surprised that the Tenant took the option to drive to their office to pay the rent in cash. The Landlord testified that the Tenant could have provided post dated cheques or could have mailed bank drafts to ensure the rent was paid on time.

### Analysis

Section 26 of the Act provides that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Residential Tenancy Policy Guideline #38 Repeated Late Payment of Rent is intended to help the parties to an application understand issues that are likely to be relevant and

may also help parties know what information or evidence is likely to assist them in supporting their position. The Guideline provides 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 evidence and testimony of the parties before me, and on a balance of probabilities, I make the following findings:

While the Tenant was afforded leniency with respect to payment of rent by the previous Landlord, the current Landlord is under no obligation to show leniency on when the rent is due. The parties testified that the tenancy agreement requires the rent to be paid to the Landlord by the first day of each month and section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement. I find that the Tenant is required to pay the rent on or before the first day of each month.

While I accept that the Tenant may decide to not pay rent by cheque or by pre-authorized withdrawal, I find his reason for not using these methods is concerning. The Tenant wants to avoid NSF charges, when he does not have the funds available on the first day of each month. Nonpayment of rent when it is due, regardless of the method by which rent is paid, puts the Tenant in a position that he is breaching the tenancy agreement and section 26 of the Act. Repeated late payments of rent amount to a fundamental breach of the tenancy agreement and can result in an end to the tenancy.

I find that the Tenant acknowledged he did not have the rent when it was due for the months of August and November 2019. I find that the Tenant was late paying the rent on these two months.

I have considered the Landlords testimony regarding the other months that the rent was paid late. I find that the rent for September and October were paid on the 11th day of each month. Even if I was to grant the Tenant some leniency because he chose to drive two hours to pay the rent in cash, I find that the rent was paid 10 days late for both of these months.

In addition, I find that the Tenant continued to pay the rent late after he received the One Month Notice. I find that the Tenant paid the rent late by cheque for January 2020.

I find that the Tenant was late paying the rent on four occasions prior to receiving the One Month Notice and on one occasion after receiving the Notice.

I have considered the policy guideline that provides three late payments are the minimum number sufficient to justify a notice to end tenancy. I find that the four late payments of rent within a six-month period of time amounts to fundamental breach of the tenancy agreement regarding payment of rent. The tenancy is ending.

I dismiss the Tenant's application to cancel the One Month Notice to End Tenancy for Cause dated November 21, 2019.

Under section 55 of the Act, when a Tenants 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.

I find that the One Month Notice complies with the requirements for form and content and I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution. I authorize the Landlord to withhold the amount of \$100.00 from the security deposit.

### Conclusion

The Tenant was repeatedly late paying the rent owing under the tenancy agreement.

The Tenant's application to cancel the One Month Notice to End Tenancy for Cause dated November 21, 2019 is dismissed. The tenancy is ending.

The effective date of the One Month Notice is December 31, 2019. The Landlord is granted an order of possession effective two (2) days after service 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: January 28, 2020

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Residential Tenancy Branch