



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

CNC, FFT

### **Dispute Codes**

### **Introduction**

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on March 17, 2020 (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 March 11, 2020 (the "One Month Notice"); and
- an order granting the return of the filing fee.

The Tenant and the Landlord's Agent attended the hearing at the appointed date and time. At the beginning of the hearing, the parties acknowledged receipt of the respective application package and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. 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 an 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. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

1. Is the Tenant entitled to an order cancelling the One Month Notice dated March 11, 2020 pursuant to Section 47 of the *Act*?
2. Is the Tenant entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?
3. If the Tenant is unsuccessful in cancelling the One Month Notice, is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on July 1, 2012; however the Tenant took possession of the rental unit on June 28, 2012. Currently, the Tenant is required to pay rent in the amount of \$1,335.00 to the Landlord which is due on the first day of each month. The Tenant stated that she paid a security and pet damage deposit each in the amount of \$575.00. The Landlord's Agent stated that he could only confirm that the Tenant paid a security deposit in the amount of \$575.00 as is indicated on the tenancy agreement. The Tenant continues to occupy the rental unit.

The Landlord's Agent testified that the Tenant has been repeatedly late paying rent in December 2019, January, February and March 2020. The Landlord's Agent stated that he subsequently served the Tenant on March 11, 2020 with a One Month Notice dated March 11, 2020 with an effective vacancy date of April 30, 2020 by posting it to the Tenant's door. The Landlord's reason for ending the tenancy on the One Month Notice is;

*"Tenant is repeatedly late paying rent"*

The Tenant agreed that the rent had been paid late on the above mentioned months; however, the Tenant stated that the Landlord's Agent had irregular office hours which has contributed to the Tenant not knowing when to pay her rent. The Tenant stated that she has order new cheques to pre pay the Landlord with post dated cheques, however, there was a delay in receiving the cheques. Lastly, the Tenant stated that she had experienced financial difficulties which contributed to some of the late payments of rent. The Tenant stated that she has been a good Tenant for the past 8 years and feels as though the Notice should be cancelled as a result.

### Analysis

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

According to Section 47 (1) of the Act, a landlord may end a tenancy by giving notice to end the tenancy for cause.

The Residential Tenancy Policy Guideline 38 states 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.

Section 26 of the Act explains that the Tenant must pay rent when it is due under the Tenancy Agreement, whether or not the Landlord complies with this Act.

In this case, parties agreed the Tenant is required to pay rent in the amount of \$1,330.00 to the Landlord on the first day of each month. I accept that the parties agreed that the Tenant has paid rent late in December 2019, January, February and March 2020.

The Landlord served the Tenant with a One Month Notice to End Tenancy for Cause dated March 11, 2020, with an effective date of April 30, 2020 by posting it to the Tenant's door on March 11, 2020. The Tenant confirmed having received the notice on March 11, 2020. I find the One Month Notice was sufficiently served pursuant to Section 88 of the Act.

I find that the Landlord has submitted sufficient evidence to demonstrate that the Tenant has paid rent late on more than three occasions. I further accept that the Tenant confirmed that rent was paid late in the above mentioned months. As such, I dismiss the Tenant's Application to cancel the One Month Notice dated March 11, 2020 without leave to reapply. As the Tenant was unsuccessful with her Application, I find that she is not entitled to the return of the filing fee.

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 issue an order of possession in favour of the Landlord. Having reviewed the One Month Notice, I find it complies with section 52 of the Act. Accordingly, I grant the Landlord an order of possession, which will be effective at 1:00 P.M. on May 31, 2020 after service on the Tenant.

Conclusion

The Tenant's Application is dismissed as I have found they have been repeatedly late paying rent. As such, I grant the Landlord an Order of Possession to be effective at 1:00 P.M. on May 31, 2020 after the Order is served to the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed 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: May 14, 2020

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Residential Tenancy Branch