



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNE-MT, LRE, RR, OLC

### Introduction

The tenant filed an application for Dispute Resolution on February 19, 2020 for the following:

- An order cancelling the One Month Notice to End Tenancy for Cause (the “One Month Notice”), with more time to dispute;
- An order suspending or setting conditions on the landlord’s right to enter the rental unit or site;
- An order reducing rent for repairs, services or facilities agreed upon but not provided;
- An order for the landlord to comply with the *Residential Tenancy Act* (the “Act”), regulation and/or the tenancy agreement.

The tenant stated that they delivered notice of this dispute and their prepared evidence to the landlord via registered mail. The landlord’s representative (herein the “landlord”) acknowledged that they received this registered mail “fairly promptly”. Reciprocally, the tenant stated they had received the landlord’s evidence for this dispute.

The matter proceeded by way of hearing pursuant to section 74(2) of the *Act* on April 6, 2020. Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

Issue(s) to be Decided

Is the tenant entitled to an order to cancel the One Month Notice pursuant to section 47 of the *Act*?

If the tenant is unsuccessful in seeking to cancel the One Month Notice, is the landlord entitled to an order of possession pursuant to section 55 of the *Act*?

Is the tenant entitled to an order suspending or setting conditions on the landlord's right to enter the rental unit?

Is the tenant entitled to an order authorizing a reduction in rent for repairs undertaken?

Background and Evidence

The tenant provided a copy of the residential tenancy agreement and spoke to its terms in the hearing. The tenant signed the agreement at the start of the tenancy, January 1, 2019. The document bears the tenant's signature and name, though the space beside that for the date is blank. The landlord signed the agreement on October 24, 2019. The tenant stated that they did not gain access to the unit until January 15<sup>th</sup> or 16<sup>th</sup>, though paid for the first full month of January 2019.

The monthly rent amount is set at \$1,000.00 per month, payable on the first of each month. There was no security deposit paid for by the tenant at the start of the tenancy.

The landlord provided a copy of a letter (the "notice letter") dated October 24, 2019, addressed to the tenant. The landlord raises concerns with rent from the start of August, September and October 2019. This reviews the more recent history of payments by stating: "For the month of October, you did not pay your rent until [the landlord] served you with a Notice to End Tenancy." The landlord presents their concerns and asks the tenant to remedy this concern.

The landlord also provided the history of rent payments by the tenant:

April 2, 2019	Late payment
June 3 2019	tenant withheld \$300 of rent payment for sub-pump repair – no receipt provided
July 4, 2019	Late payment
August 14, 2019	\$800 paid for August 2019

August 18, 2019	\$200 remainder for August
September 3, 2019	Late payment
October 3, 2019	\$700 paid for October 2019
October 19, 2019	\$300 remainder for October
January 24, 2020	Late payment
February 7, 2020	Late payment

The landlord submitted three copies of notice to end tenancy. These followed after the notice letter of October 24, 2019:

- A 10 Day Notice to End Tenancy for Unpaid Rent was issued on January 20, 2020, for the unpaid rent from January 1<sup>st</sup> – the tenant then paid on January 24;
- A 10 Day Notice to End Tenancy for Unpaid Rent was issued on February 4, 2020, for the unpaid rent from February 1<sup>st</sup> – the tenant then paid on Feb 7;
- The One Month Notice signed February 10, 2020 gives the move out date for the tenant on March 15, 2020. The reason for issuing this is for ‘tenant is repeatedly late paying rent.’

The landlord presented that the tenant has paid rent on the 1<sup>st</sup> day of each of March and April 2020.

The tenant spoke to this issue in the hearing. They acknowledged receiving these notices. The late payments were due to lost contract work in their line of employment, this represented a major slow point in the local economy. They discussed this with the landlord and the landlord “was aware of what was going on”. The tenant continued to pay “as best [as they] could.”

The tenant presented that they withheld \$300.00 from the June 2019 rent amount because they felt this was fair recompense for work they undertook to repair a sub-pump on the property. This “seems fair” where the tenant lost one full day of work due to this issue.

The tenant also presented that work undertaken by a contractor in October and November necessitated the landlord’s entry into the unit. The landlord had asked the tenant’s permission to do an inspection of the unit; however, this was not 24 hours notice. In response to this, the landlord acknowledged there was a disruption due to weather flood conditions with a “fair amount of work involved.”

## Analysis

I find the evidence is clear that there is a tenancy agreement in place between the landlord and the tenant. The tenancy agreement presented by the tenant bears their signature, although the date is omitted next to the signature.

The agreement commenced in January 2019. The Act section 1 sets out the definition of “tenancy agreement: “an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit. . .”

From the testimony in the hearing, as well as a copy of the tenancy agreement in evidence, I am satisfied that there is a tenancy agreement between the tenant and landlord. This commenced in January 2019. The terms of the agreement are clear to both parties, and there was no dispute on either the existence of the agreement, or the terms governing it.

Section 47(1)(b) of the *Act* provides that a landlord may end a tenancy by giving a One Month Notice to end the tenancy if the tenant is repeatedly late paying rent. This is the reason checked by the landlord on the One Month Notice as applicable in this situation.

Section 47(4) stipulates a tenant has 10 days to submit an Application for Dispute Resolution seeking to cancel the notice. Section 47(5) states that if the tenant does not dispute the notice within this time frame the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit.

In this instance, the tenant filed within the legislated time frame, on February 19, 2020. I find these dates are within the statutory limits, within 10 days after the tenant received the One Month Notice on February 10, 2020.

The Residential Policy Guideline 38 ‘Repeated Late Payment of Rent’ gives a statement of the policy intent of the legislation. On section 47(1)(b), it provides: “Three late payment are the minimum number sufficient to justify a notice under these provisions.”

In the matter before me, the landlord has the onus to prove that the reason for ending the tenancy is valid and sufficient. Based on the evidence and testimony before me, I make the following findings:

- Multiple entries evidence of the landlord shows late payments of rent. From statements the tenant made in the hearing, I find the tenant acknowledged late payments.
- The notice letter shows 6 instances of late rent payment in 2019, and 2 instances in 2020.

- On January 20 and February 4, 2020, the landlord issued a '10 Day Notice to End Tenancy for Unpaid Rent'. This makes the tenant aware in the strictest terms under the *Act* of the need to pay rent.

I find the tenant was aware of all the relevant information. The tenant's statement that they discussed this, and the landlord "was aware of what was going on" is outweighed by the evidence presented by the landlord showing late payments throughout the tenancy.

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

I find the tenant did not have the right to withhold payment of rent. The tenant testified and gave evidence that they were waiting on money due to contract work payments. This is not sufficient evidence, as presented by the tenant, on why they feel they were not required to pay the rent. Similarly, although the tenant made submissions on reduction of rent to undertake repairs in June 2019, I find this does not override the provisions of the *Act* and the tenancy agreement on the payment of rent.

For these reasons, I dismiss the tenant's application to cancel the One Month Notice. The tenancy is ending.

The tenant's issue concerning the landlord's entry to the unit has no bearing on the issue at hand, that of the tenant's application to cancel the One Month Notice. There is no relation between this issue and the provision of rent, and the tenant has not shown any other damage that ensued from the landlord's entry to the unit. I dismiss this portion of the tenant's application without leave to reapply.

Under section 55 of the *Act*, when a tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied 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 the landlord served the One Month Notice with complete details on February 10, 2020. The tenant acknowledged receiving this document. The move out date of March 15, 2020 was completed in the document.

I find the One Month Notice, as described in the hearing, complies with the requirement for form and content with each detail. These are, as in section 52: the signature and date of the landlord; the address of the rental unit; the effective date of the notice (i.e.,

the move out date); and the grounds for ending the tenancy. The document itself is in the approved form as specified in the *Act*.

Given my finding that the One Month Notice complies with the requirements of form and content, the landlord is entitled to an order of possession on the effective date outlined therein.

### Conclusion

For the reasons outlined above, I dismiss the tenant's application for a cancellation of the One Month Notice, without leave to reapply.

I grant an Order of Possession to the landlord effective two days after service of this Order on the tenants. 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 *Act*.

Dated: May 8, 2020

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Residential Tenancy Branch