



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, MNDC, FF

### Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (Act) for:

- an order cancelling a One Month Notice to End Tenancy for Cause (Notice) issued by the landlord;
- compensation for her monetary loss or other money owed; and
- recovery of the filing fee.

The tenant, her advocate, the landlord, and the landlord's legal counsel attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The parties confirmed receiving the other's evidence.

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

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters-

*Landlord behaviour-*

Section 6.10 of the Rules provides the following:

**Interruptions and inappropriate behaviour at the dispute resolution hearing**

Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.

In this case, I explained the order of procedure at the beginning of the hearing, which included cautions that each participant was not to interrupt the proceedings. I further informed the parties that recordings were not allowed during Residential Tenancy Branch (RTB) hearings and to turn off any recording device in the event a recording was being made.

I then asked if anyone had any questions about the hearing process, and the landlord said he did. Instead of a question, the landlord proceeded to attempt to provide instructions for the other participants' conduct during the hearing.

I then informed the landlord that I would be conducting the hearing and he would listen to my instructions.

Further, during the hearing, although the landlord had obtained legal counsel, he wanted to speak over her and in her place from the beginning. Even though I attempted to get the landlord's attention multiple times to ensure a fair, efficient and consistent process, he continued to talk over me in a loud and aggressive manner. The landlord finally allowed his legal counsel to make her submissions on his behalf.

Later in the hearing, when I attempted to facilitate a discussion on how the tenant's monthly rent could be paid going forward, the landlord went on a long outburst, which included making derogatory comments about the tenant.

Despite my attempts to get the landlord to stop speaking, he would not stop or listen. I then made the decision to exclude the landlord by placing him on mute, where he

remained during the balance of the hearing. This was because the landlord's conduct throughout the hearing was disruptive, belligerent, and rude.

For clarification, the landlord was able to listen to the hearing, but he could not be heard for the remainder of the hearing.

#### Issue(s) to be Decided

Is the tenant entitled to an order cancelling the Notice?

Is the tenant entitled to monetary compensation from the landlord?

Is the tenant entitled to recovery of the filing fee paid for this application?

#### Background and Evidence

There is an extensive history of dispute resolution proceedings between the tenant and the landlord, related to the now seven Notices to end the tenancy issued by the landlord. The previous Decisions are listed on the style of cause page of this Decision, they are all incorporated by reference, and all should be read in conjunction with this Decision.

The current dispute resolution was the sixth hearing between the tenant and the landlord, all except one initiated by the tenant to cancel the landlord's Notices.

The one application for dispute resolution initiated by the landlord dealt with his request to enforce two 10 Day Notices to end the tenancy, which had previously been cancelled by another arbitrator in a Decision of March 8, 2019. The arbitrator in that Decision of April 19, 2019, found that the issue of the two 10 Day Notices was previously decided by another arbitrator and applied the legal principle of *res judicata* in dismissing the landlord's application.

In every instance in the tenant's applications, the landlord's Notices were cancelled.

The evidence here shows that the landlord served the tenant the latest and seventh Notice dated March 4, 2020, on March 5, 2020.

The cause listed on the Notice alleged that the tenant is repeatedly late paying rent.

The tenant made her application on March 5, 2020, within the time frame required of a tenant when disputing a landlord's Notice.

*Landlord's legal counsel's submissions-*

Legal counsel submitted the Notice was issued in good faith as the landlord received the March 2020 rent on March 2, 2020. The legal counsel, retained after the Notice was issued to the tenant, submitted that the landlord now understands that he cannot rely upon past history payments and therefore only one late payment was before the arbitrator to consider. The legal counsel submitted that the principle of *res judicata* applied as to the past history of payments, which has now been explained to the landlord.

The legal counsel submitted that although there was a period of time when he accepted e-transfers of rent payments, he does not own a computer or smart phone and does not have regular access to the internet. The landlord also wants his banking information to be private, which is the reason he stopped accepting e-transfers, according to the legal counsel. The legal counsel submits this is also why he required the tenant to pay rent by registered mail.

The legal counsel proposed that to ensure compliance with the tenant's obligation under section 26 of the Act, the rent payment be sent via registered mail at least 5 days before the first of the month, in recognition of section 90 of the Act.

As to the tenant's claim for compensation, the legal counsel submitted that this matter is barred by *res judicata* by the most recent Decision of another arbitrator, dated July 31, 2019.

In that Decision, the other arbitrator awarded the tenant compensation for loss of quiet enjoyment, while referencing four previous dispute resolution Decisions. According to the legal counsel, the other arbitrator took into consideration those disputes in granting the tenant's request for compensation, in part, and this is the first time since that Decision there has been another Notice issued to the tenant.

The legal counsel submitted past RTB Decisions referring to the same issues and outcomes.

Alternatively, the legal counsel submitted that the amount claimed is unreasonable, as she has not provided evidence to establish that compensation is due or prove the value of the damage or loss.

The legal counsel submitted that one Notice issued in good faith is not sufficient to establish a loss of quiet enjoyment.

*Tenant's advocate's submissions-*

The advocate submitted that this hearing will be the sixth hearing dealing with the landlord as he keeps giving the tenant eviction notices without cause. The advocate submitted that the landlord has given the tenant four 10 Day Notices and three One Month Notices for continual late payments of rent.

The advocate submitted that all the Notices were without cause as the landlord requested that the rent be sent by mail and the tenant sends them by registered mail before they are due.

The advocate submitted that the tenancy agreement does not stipulate how rent is to be paid and for the first three months, rent was paid in cash. For the next 12 months, rent was paid by e-transfer. Then on July 25, 2018, the landlord gave the tenant a letter saying that he would no longer accept e-transfer and that she had to send the rent by mail.

The advocate submitted that the landlord has refused a pre-authorised debit from the bank or any other methods, except by mail. The advocate also submitted they sent the landlord 12 post-dated cheques, but he returned them.

The advocate referred to the tenant's evidence to show the registered mail receipts verifying that each rent cheque has been mailed several days in advance of the first, including the March rent, which is in question, which was mailed on February 28, 2020.

The advocate submitted that the landlord is simply making repeated attempts to evict the tenant in order to get a much higher rent, with one of his units being rented for \$4,500.

The advocate submitted that the tenant is under an extreme amount of stress by the repeated eviction attempts by the landlord, all of which were found without merit.

*Landlord's testimony-*

Before the landlord was placed on mute, among many other things, he said he would not accept 12 post-dated cheques because the tenancy was month-to-month, which no one but him seems to understand.

Analysis

Based on the relevant oral and written evidence, the submissions of the parties, and on a balance of probabilities, I find as follows:

I have taken into consideration the landlord's legal counsel's submission that the past Decisions of the RTB should be considered in making my Decision.

I have reviewed these past Decisions and I distinguish them from the present case as I find they are not sufficiently related to the facts and issues here.

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

Once the tenant disputed the One 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 One Month Notice is valid and should be upheld, pursuant to Rule 6.6. If the landlord fails to prove the One Month Notice is valid, the Notice will be cancelled, and will have no force or effect.

In this instance, the burden of proof is on the landlord to prove the tenant is repeatedly late paying rent, the cause listed on the Notice.

Section 26 of the Act requires a tenant to pay rent on the day that it is due, in this case, on the first day of each month.

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

In this case, merely citing the Act and the Residential Tenancy Branch (RTB) Policy Guideline goes far beyond the issues in this case. As has been referred to many times in this Decision and Decisions by other arbitrators on the landlord's previous six Notices, the landlord has not yet issued a Notice that was found to have merit. The

Notices all related to issues concerning the landlord's allegations that the tenant has not paid rent on time.

Although the landlord's legal counsel acknowledged that the instance of one late payment is not sufficient to satisfy Policy Guideline 38, I find it necessary to consider whether the payment for March was paid late.

I have reviewed the tenant's undisputed documentary evidence, which was the tracking number for the March payment. The tracking history shows that the registered mail was accepted on February 28, 2020, but was not processed by Canada Post until March 2, 2020, the day it was received by the landlord.

As it is the landlord who has insisted that rent be sent by registered mail, I find he will have to rely upon the ability of Canada Post to timely process and deliver the mail to him.

It appears the landlord failed to consider that the registered mail was mailed in a timely manner by the tenant and, given the past history of this tenancy, was only too eager to serve a One Month Notice, without considering whether it was sent in time.

In this instance and under these circumstances, I order that the tenant paid her March 2020 rent on time and I order the landlord is prohibited from using this rent payment as a late payment in order to justify another One Month Notice based upon repeated late payments.

As I have found the tenant paid her March 2020 on time and as this is not a case of repeated late payments, as there was only one in question, I find the Notice of March 4, 2020, served by the landlord is without merit.

I order the Notice of March 4, 2020, be cancelled and of no force or effect. The tenancy will continue until otherwise ended under the Act.

### **Monetary claim of the tenant –**

The tenant has requested the amount of \$750.00 for loss of quiet enjoyment.

In this case, I do not find that the current claim is *res judicata*. The monetary award by the arbitrator in the July 31, 2019, Decision dealt with past dealings between the parties, up to that time.

I will assess whether the tenant has met her burden of proof as it relates to the issues with the landlord's Notice of March 4, 2020.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

*Residential Tenancy Policy Guideline #16* provides direction on compensation. It states as follows:

In order to determine whether compensation is due, the arbitrator may determine whether –

- 1) a party to the tenancy agreement has failed to comply with the *Act*, regulation or tenancy agreement;
- 2) loss or damage has resulted from this non-compliance;
- 3) the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- 4) the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Following a review of the evidence submitted by the tenant, I find the tenant has failed to provide sufficient evidence to prove the amount of or value of damage or loss. For instance, the tenant did not provide a list of particulars or breakdown in how she arrived at this sum claimed, or \$750.00.

*Policy Guideline #16* further notes, “an arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward...*nominal damages* are a minimal award [that may be granted] where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.”

In this case, it is clear the landlord has not facilitated a civil relationship with his tenant. If that had been the case, I find it would be reasonable that the landlord would inquire of the tenant whether the rent payment for March 2020 had been mailed. Further, the

landlord insisted on the tenant making payments by mail, which I find is not as reliable as having e-transfers, pre-authorised debits, or post-dated cheques, all of which the landlord has refused.

Given the acrimonious relationship of the landlord and the tenant, which I do not find is the fault of the tenant given the landlord's confrontational behaviour of the hearing, I accept that issuing the tenant a seventh, unsubstantiated Notice, putting the tenancy of this tenant at risk yet again, to be a great stressor for the tenant. I find a reasonable person would be unreasonably distressed about another, seventh Notice potentially ending her tenancy, when she had mailed her rent payment prior to the due date.

I find an award of nominal damages would be more appropriate in this circumstance. I find a reasonable amount to award the tenant is \$400.00.

#### **Recovery of the filing fee –**

I allow the tenant recovery of her filing fee of \$100.00, as she was required to file this application in order to dispute the Notice, or her tenancy would have ended pursuant to section 47(5) of the Act. As I have found the Notice without merit and cancelled it, I award her recovery of the \$100.00 filing fee, pursuant to section 72(1) of the Act.

Overall, I find the tenant has established a claim of \$500.00, comprised of her monetary award for nominal damages of \$400.00 and the filing fee of \$100.00

Therefore, I authorize the tenant to deduct the amount of \$500.00 from her next or a future month's rent payment in satisfaction of her monetary award, pursuant to section 72(2)(a) of the Act. The tenant should inform the landlord when she is withholding this amount. The landlord is ordered to not serve the tenant a 10 Day Notice to End Tenancy for Unpaid Rent in this instance.

Alternatively, I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$500.00, which is included with the tenant's Decision.

The order may be served upon the landlord and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement are recoverable from the landlord.

If the tenant elects to satisfy her monetary award by deducting \$500.00 from a future month's rent payment, the monetary order is of no force or effect.

**Other matters and Issues; cautions to the landlord -**

I find the evidence and the past Decisions support the landlord has made it extremely difficult for the tenant to pay her monthly rent. I have arrived at this conclusion based upon the undisputed evidence that for the first three months of the tenancy, the tenant was required to pay rent in cash.

Then beginning in July 2017, continuing through July 2018, the tenant paid her monthly rent by e-transfer. Then on July 25, 2018, the landlord notified the tenant that beginning in August 2018, all rent cheques be mailed. I note that nothing in the tenancy agreement requires that monthly rent be paid in a particular manner.

The landlord continues in his refusal to accept e-transfers or a pre-authorized debit for the monthly rent payments.

I find that this behaviour leads me to conclude the landlord is making it as difficult as possible for the tenant to make timely rent payments and suggests a pattern of providing the landlord with another opportunity to end the tenancy.

Given the history of this tenancy, I am not confident that the landlord will not continue to send notices to end the tenancy to the tenant.

Given the above and as the landlord refused to participate in a discussion about how rent can be paid, going forward, I find it appropriate and necessary to make the following orders, pursuant to section 62(3) of the Act.

I note that the issue relating to late payments of rent did not arise until the landlord required the tenant to mail her rent cheques.

I find it unreasonable that the tenant should continue to incur the costs of registered mail for rent payments and I find the landlord was unreasonable in rejecting the options for rent payment suggested by the tenant and her advocate, such as e-transfers, pre-authorized debit payments, the tenant's preferred method, or 12 post-dated cheques, as an alternative suggestion.

Additionally, the landlord was informed in the Decision of May 25, 2019, that he may not refuse rent.

Given that this is a unique situation and that I have found the landlord unreasonable in rejecting the options for payment suggested by the tenant and her advocate, I therefore find it reasonable under these circumstance to provide the tenant authority to give the landlord 12 post-dated rent cheques, beginning with the next monthly rent, or June 2020, for rent payments from June 2020 through May 2021. The landlord is allowed to deposit one rent cheque at the beginning of each month, as and when monthly rent becomes due.

If the landlord refuses to accept the 12 post-dated rent cheques as he has in the past, I order that the tenant is deemed to have paid each of those 12 months, in full.

For clarification for the landlord, refusal to accept the 12 post-dated rent cheques, will mean that the tenant has fulfilled her obligation to pay rent under the tenancy agreement for the period of time from June 2020 through May 2021, in other words, rent will be deemed to have been paid in full, and he may not serve the tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities or a One Month Notice to End Tenancy for Cause for repeated late payments of rent during this time period.

I have made this order due to the fact that the tenant, while preferring to make rent payments by e-transfer, as she did for 12 months during this tenancy, or by pre-authorized debit, did offer to pay by 12 post-dated cheques. These offers were consistently given by the tenant's advocates and the tenant, as shown by the evidence and multiple past Decisions relating to this tenancy and the landlord rejected all options.

I have also made this order as the evidence shows that the landlord has returned other cheques sent by the tenant or the tenant's advocate.

Further, if the landlord refuses the 12 post-dated rent cheques, I order that he is not allowed to make any other collection efforts.

The tenant should have documented proof, with a separate witness, that she has sent the landlord the 12 post-dated cheques.

Further, for clarity for both parties, the tenant's first, post-dated rent cheque, for the month of June 2020, should be in the amount of \$250.00, which is the monthly rent of \$750.00 less the tenant's monetary award of \$500.00.

In the event the tenant chooses to continue making her monthly rent payments by registered mail or mail each month, instead of by 12 post-dated cheques, I order that the tenant has paid her monthly rent on time if she places the same in the mail at least five days prior to the monthly rent being due, pursuant to section 90 of the Act, whether the landlord receives the rent payment by the first day of the month or not.

In May 2021, the tenant is allowed to send 12 more post-dated cheques for her monthly rent payments for June 2021 through May 2022, and every subsequent year, under the same orders and conditions as directed above.

If the tenant receives a notice of a rent increase at any time in the future during this tenancy, which is compliant with the requirements of the Act, the tenant is permitted to send the rent difference in post-dated cheques, for the remaining number of cheques in the possession of the landlord for that year. I order that the landlord may not refuse the cheques, in the case, and if he does, I order that the tenant is deemed to have paid the legitimate rent increase in full.

Having reviewed the previous Decisions of other arbitrators relating to this tenancy, I have determined that the landlord was made aware of his obligation to ensure the quiet enjoyment of the tenant. I, however, find it necessary to reaffirm for the landlord his obligation.

Section 28 of the Act states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the Act; use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Branch Policy Guideline 6 states that a breach of a tenant's right to quiet enjoyment occurs with frequent and ongoing interference by the landlord, such as the case here, frequent Notices to end the tenancy being issued.

In this case, I must advise the landlord that interfering with a tenant's right to quiet enjoyment could result in the tenant being successful in future applications where she may seek further compensation for a loss of quiet enjoyment and a devaluation of the tenancy.

I also find it necessary to direct the landlord's attention to section 87.3 of the Act, which deals with administrative penalties. His failure to abide by the orders of the Director may subject the landlord to fines up to \$5,000.00 for each occurrence.

I encourage the landlord to communicate with his legal counsel should he have any questions about the terms of this Decision.

I note that the tenant's advocate indicated at the hearing that they had contacted the Compliance and Enforcement division of the RTB early in the week of the hearing. The landlord should be aware that this Decision may be reviewed and considered by that division.

I leave it to the landlord's legal counsel to explain how month-to-month tenancies operate under the Act.

### Conclusion

The tenant's application has been granted in large part.

The One Month Notice to End Tenancy for Cause of March 4, 2020, issued by the landlord to the tenant has been ordered cancelled.

The tenant has been granted a monetary award for nominal damages in the amount of \$400.00.

The tenant has been granted recovery of her filing fee of \$100.00.

I have issued orders pursuant to section 62(3) of the Act and cautions to the landlord.

The landlord has been referred to the section of the Act dealing with administrative penalties.

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 11, 2020

---

Residential Tenancy Branch