



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, OLC

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As the tenant confirmed that they were handed the 1 Month Notice by the landlord on June 30, 2020, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*. As the landlord confirmed that the tenant handed them a copy of the tenant's dispute resolution hearing package on or about July 18, 2020, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. Since both parties confirmed that they had received one another's written evidence, I find that the written evidence was served in accordance with section 88 of the *Act*.

The parties agreed that the landlord has accepted payments from the tenant for the period following landlord's issuance of the 1 Month Notice. On this basis, the landlord confirmed that they had accepted a payment allowing the tenant to remain on the premises until at least August 31, 2020.

At the beginning of the hearing, both parties agreed to receive their copies of the decision and/or order by way of email addresses they provided during the hearing.

Issues(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Should any other orders be issued with respect to this tenancy?

Background and Evidence

On July 1, 2017, the parties entered into a month-to-month tenancy for a coach house on this property that commenced on September 1, 2017. Although the terms of this tenancy were set out in emails exchanged between the parties, no formal written tenancy agreement was established that either party entered into written evidence. The parties agreed that monthly rent was set at \$1,000.00, which was to include water and hydro.

The tenant entered into written evidence a copy of the 1 Month Notice seeking an end to this tenancy for cause as of July 31, 2020. In that Notice, the landlord cited the following reasons for the issuance of the Notice:

*Tenant is repeatedly late paying rent.*

*Tenant or a person permitted on the property by the tenant has:*

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord.*

In an attachment to the 1 Month Notice, the landlord identified the following issues that had given rise to their issuance of the Notice:

- the tenant was frequently late paying rent pre COVID-19 (approximately 12 times in under 3 years, up to 22 days late and despite frequent reminders);
- the tenant replaced two areas of flooring in the rental unit when only one area was approved by the landlord, and then issued an invoice for both;
- the tenant ignored the landlord's direction not to install a dishwasher in the rental unit, citing stress on well water and rural septic system;
- the landlord endured almost 30 minutes of the tenant's "angry screaming fit on April 9, 2020", to such a degree that the landlord thought that the neighbours would have to come to the landlord's rescue;

- shortly after that incident, the tenant changed the security question and answer for e-transfer for rent in his attempt “to harass, antagonize and bully the landlord”; and
- the tenant dragged a “dead boat and dead trailer” onto the property without the landlord’s permission almost 3 years ago. These items were then dragged onto a public road in early June 2020, “causing concern and consternation of neighbours” and having bylaw officer involved to settle this problem.

At the hearing, the landlord gave sworn testimony that the tenant has been repeatedly late in paying their monthly rent for this tenancy. They gave sworn testimony supported by some written evidence in the form of screenshots of text messages exchanged with the tenant that rent on the following months was paid after the scheduled payments were due on the first of each month:

<b>Payment Due</b>	<b>Payment Received in Full from the Tenant</b>
August 1, 2018	August 4, 2018
February 1, 2019	February 5, 2019
April 1, 2019	April 2, 2019
September 1, 2019	Some on September 4, 2019 and remainder by September 22, 2019
October 1, 2019	October 3, 2019
November 1, 2019	November 4, 2019
March 1, 2020	March 2, 2020

The landlord gave sworn testimony and referred to written evidence that they supplied in which the landlord reminded the tenant by way of an August 31, 2019 email that “rent (preferably cash) is due on the **first** day of each month” (emphasis in original). The tenant confirmed that they received the August 31, 2019 email from the landlord.

The tenant did not ask any specific questions of the landlord with respect to the landlord’s sworn testimony or the written evidence the landlord presented. The tenant confirmed that they were late in paying their rent some months, particularly when they were away from home. For example, they did not dispute the claim that rent for September 2019 was late as the tenant was travelling abroad. The tenant testified that the landlord did not provide receipts for cash rent payments, even though the tenant requested them. The tenant said that they “endeavoured” to pay their rent on time but

that they were reticent to leave cash in large amounts of cash in envelopes for the landlord either on the landlord's door or in an area within the dwelling where both the landlord and the tenant had access. In some of the screenshot messages, which the tenant confirmed were accurate accounts of their communication, the tenant offered to pay rent immediately by e-transfer or later by cash, once they had been able to access cash after the first of the month. The tenant stated that they were always active in communicating with the landlord about rent payments and that until recently the landlord "was fine with this." Although the tenant did not have specific questions about the late payments cited by the landlord, the tenant said that it was possible that the landlord did not find or retrieve the cash payments in envelopes until a few days after they were left for the landlord.

Although the landlord noted that they preferred to receive cash payments for the rent, they said that they never advised the tenant that the tenant could not pay their rent by way of a cheque. The landlord has also accepted monthly rent payments by e-transfer. The landlord also gave sworn testimony that they are very particular about cash being left in envelopes for them. Since they live on the same property as the tenant and are seldom away for very long, the landlord testified that they would have noticed any envelopes of money left for them on their door or on a table within the dwelling. The landlord was very certain that they would have discovered any rental payments made by the tenant very soon after these payments were left for the landlord by the tenant.

Although it was not a part of the tenant's application for dispute resolution, the tenant also stated that they had made payments towards the hydro they were using during the course of this tenancy. They did so even though there was no requirement in their tenancy agreement with the landlord that such payments be made as a condition of this tenancy. The tenant said that they had requested receipts for these payments, but the landlord had also not issued such receipts. The tenant maintained that it was possible that they had overpaid for hydro during this tenancy.

### Analysis

Section 47 of the *Act* contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 47(4) of the *Act*, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. If the tenant makes such an application, as the tenant did in this case, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 1 Month Notice.

Section 47(1) of the Act reads in part as follows:

**47** (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*

*(b) the tenant is repeatedly late paying rent;*

*(d) the tenant or a person permitted on the residential property by the tenant has*

*(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*

*(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.*

Section 26(1) of the Act establishes 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.” There is no dispute that the tenancy agreement requires the tenant to pay all of the rent by the end of the day on the first of each month.

In considering this matter, I note the wording of RTB Policy Guideline #38, which provides the following guidance regarding the circumstances whereby 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...*

*However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be “repeatedly” late...*

As a result of the global pandemic, Ministerial Order M089 was issued by the Province on March 18, 2020, subsequently repealed and replaced on June 24, 2020 by Ministerial Order M195. This Ministerial Order established in part that landlords would not be entitled to obtain an end to a tenancy for cause for late payment of rent that occurred during the period when the State of Emergency was in effect, commencing on March 18, 2020. For this reason, I cannot consider any late payment of rent that has occurred during the period from March 18, 2020, until the present. The landlord confirmed that this portion of their application for an end to this tenancy on the basis of

the late payment of rent was for repeated late payment of rent that preceded the commencement of the emergency period that began on March 18, 2020.

I find on a balance of probabilities that the landlord has provided sufficient convincing evidence that the tenant has been late paying their rent on many occasions between August 1, 2018 and March 18, 2020. It would certainly have been helpful if the parties had been able to refer to rent receipts issued by the landlord after cash payments had been made; however, the tenant did not dispute any of the seven instances cited by the landlord where monthly rent was not paid by the end of the day on the first day of the month. The screenshots provided by the landlord and the sworn testimony of the parties confirm that the tenant has not been paying rent when it was due for a lengthy period of time.

I attach considerable weight to the tenant's failure to pay rent on time for the period following August 31, 2019, when the landlord reminded the tenant that rent was due on the first of each month. After receiving that email, the tenant continued to pay rent late on four of the next seven months, the months immediately prior to the imposition of the State of Emergency declared in response to the global COVID-19 pandemic. Even though the 1 Month Notice was issued during the State of Emergency, Ministerial Order M195 did not prevent the landlord from seeking an end to this tenancy for the late payment of rent during the period prior to March 18, 2020, the date when the State of Emergency took effect.

After considering RTB Policy Guideline #38, the sworn testimony of the parties and the written evidence before me relevant to the landlord's claim that the tenancy should be ended for the repeated late payment of rent, I dismiss the tenant's application to cancel the 1 Month Notice as I am satisfied that there is a pattern of late payment of rent for this tenancy.

Section 55(1) of the *Act* reads as follows:

*If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

I have reviewed the landlord's 1 Month Notice to ensure that the landlord has complied with the requirements as to the form and content of section 52 of the *Act*. I find that the landlord's 1 Month Notice meets all of the requirements of section 52.

I find that the landlord is entitled to an Order of Possession that takes effect at 1:00 p.m. on August 31, 2020, the last day in which the landlord's acceptance of payment for use and occupancy only for the month of August 2020 enables the tenant to remain in this rental unit. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit by 1:00 p.m. on August 31, 2020, the landlord may enforce this Order in the Supreme Court of British Columbia.

As this tenancy ended on July 31, 2020, and the tenant will be required to vacate the premises by the end of this month, there is no need to consider the other aspects of either the landlord's 1 Month Notice or the tenant's application that the landlord be required to comply with the *Act*.

### Conclusion

I dismiss the tenant's application to cancel the 1 Month Notice. The landlord is provided with a formal copy of an Order of Possession effective by 1:00 p.m. on August 31, 2020. 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: August 11, 2020

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Residential Tenancy Branch