



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant filed under the *Residential Tenancy Act* (the “Act”), to cancel a One Month Notice to End Tenancy for Cause, (the “Notice”) issued on July 9, 2020. The matter was set for a conference call.

Both the Landlord and Tenant attended the hearing and were each affirmed to be truthful in their testimony. They were both provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure requires the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

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 is described in this Decision.

### Issues to be Decided

- Should the Notice issued on July 9, 2020, be cancelled?
- If not, is the Landlord entitled to an order of possession?

### Background and Evidence

The tenancy agreement recorded that the tenancy began on October 1, 2018, as a month to month tenancy. The parties agreed that rent in the amount of \$974.70 is to be paid by the first day of each month, and the Landlord collected a security deposit of \$475.00 and at the outset of this tenancy. Both parties submitted a copy of the tenancy agreement into documentary evidence.

The Landlord testified that they served the Notice to end tenancy to the Tenant on July 9, 2020, by posting it to the front door of the rental unit. The reason for the Notice was checked off as follows:

- *Tenant is repeatedly late paying rent*

The Notice states the Tenant must move out of the rental unit by August 31, 2020. The Notice informed the Tenant of the right to dispute the Notice within ten days after receiving it. The Notice also informed the Tenant that if an application to dispute the Notice is not filed within ten days, the Tenant is presumed to accept the Notice and must move out of the rental unit on the date set out on page one of the Notice.

The Landlord testified that the Tenant has been late in paying their rent seven times in the last year; September, October, November and December 2019, as well as January, February and March 2020. The Landlord submitted a rent payment history into documentary evidence.

The Landlord testified that due to the number of times that the Tenant has been late in paying the rent, they are seeking to end the tenancy. The Landlord requested an Order of Possession.

The Tenant testified that they had paid rent late several times during this tenancy.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Tenant was deemed to have received the Notice on July 12, 2020, three days after it was posted to the front door of the rental unit, pursuant to the deeming provision in section 90 of the *Act*.

I have reviewed the Tenant's application, and I find that they filed their application to dispute the Notice on July 16, 2020, within the legislated timeline.

Section 47 of the *Act* provides that a landlord may end a tenancy where the tenant is repeatedly late paying rent. The Residential Tenancy Policy Guideline #38 Repeated Late Payment of Rent, gives further guidance stating:

**Residential Tenancy Policy Guideline #38. Repeated Late Payment of Rent**

The Residential Tenancy *Act* 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.

In this case, I accept the sworn testimony of the Landlord, supported by their documentary evidence, that the Tenant has paid their rent late seven times in the last twelve months. I find that this is a sufficient number of late rent payments to justify the Notice issued by the Landlord.

Therefore, I dismiss the Tenant's application to cancel the Notice issued on July 9, 2020.

Section 55(1) of the *Act* states:

**Order of possession for the landlord**

**55(1)** 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 Notice to end tenancy, and I find the Notice complies with section 52 of the *Act*.

Therefore, I find that the Landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*. I grant the Landlord an **Order of Possession** effective not later than **1:00 p.m. on August 31, 2020**. The Tenant must be served with this Order. 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.

### Conclusion

The Tenant's Application to cancel the Notice, issued on July 9, 2020, is dismissed. I find the Notice is valid and complies with the *Act*.

I grant an **Order of Possession** to the Landlord effective not later than **1:00 p.m. on August 31, 2020**. The Tenant must be served with this Order. 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 24, 2020

---

Residential Tenancy Branch