



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FFT

### Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 47; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Parties confirmed receipt of each other’s hearing packages (application for dispute resolution, notice of hearing and evidence).

### Issue(s) to be Decided

Are the Tenants entitled to a cancellation of the notice to end tenancy?

Are the Tenants entitled to recovery of the filing fee?

### Background and Evidence

The following are agreed or undisputed facts: The tenancy under written agreement started on October 1, 2017. Rent of \$743.13 is payable on the first day of each month. At the outset of the tenancy the landlord collected \$362.50 as a security deposit and \$362.50 as a pet deposit. The Landlord purchased the rental unit in November 2020 and on May 4, 2021 the new Landlord served the Tenants with a one month notice to end tenancy for cause dated May 4, 2021 (the “Notice”). The reason stated on the

Notice is that the Tenants have repeatedly paid rent late. The Notice sets out late rents paid for January, February, March and May 2021.

The Landlord confirms and the Tenant does not dispute that rents were paid late on January 4, February 2, March 2, and May 4, 2021.

The Tenant states that since March 2020 the Landlord has accepted repeated late rent payments without any communication or indication that there were any concerns or that the tenancy would be at risk. The Tenant states that there were no consequences to any of the late payments. The Tenant submits that prior to March 2020 the Landlord was given post dated cheques for the rent. The Tenant submits that in March 2020 a new landlord took over and that rental payments were made by e-transfer and a few days late each month. The Tenant submits that the Landlord took over ownership of the property in November 2020, that there were no discussions with the Landlord about the terms of the tenancy and that the Tenant understood that the tenancy continued without change. The Tenant provides copies of bank statements showing consecutive late rent payments for the period February 28 to and including November 30, 2020. The Tenant argues that the Landlord accepted the repeated pattern of late rent payments and gave no indication that there were any concerns or that the tenancy would be at risk. The Tenant argues that the Landlord has acquiesced to the late payments and cannot now rely on late payments to return to a strict enforcement. The Tenant provides copies of Residential Tenancy Branch (the "RTB") decisions and a Supreme Court decision dated March 16, 2020 (*Guevara v. Louie*).

The Landlord states that the previous landlord confirmed with the Landlord that the Tenants paid their rent. The Landlord states that after taking ownership of the property there were no discussions with the Tenants about their late rent payments. The Landlord argues that the tenancy agreement is clear on the requirement to pay rent on the first day of each month. The Landlord argues that estoppel does not apply to the current facts. The Landlord argues that the decisions provided by the Tenant deal with

late rent payments over tenancies that are between 8 and 15 years. The Landlord provides copies of RTB decisions and argues that these decisions are more akin to the present facts. The Landlord states that there is no other reason for the Landlord seeking to end the tenancy and that the late rent payments cause the Landlord stress.

### Analysis

I note at the outset that the RTB decisions provided by the Landlord do not deal with estoppel or acquiesce unlike the RTB decisions provided by the Tenant. These legal principles are well set out in the recent decision of the B.C. Supreme Court in *Guevara v. Louie* 2020 BCSC 380. The Court held that three late payments is insufficient to end a tenancy for cause as consideration must be given to the conduct of the parties. In particular, the Court found that: "... the real issue before [the Arbitrator] was whether Ms Louie was estopped from enforcing a provision of the tenancy agreement by her past conduct. That issue required a determination of whether original Ms. Louie's conduct led Ms. Guevara to conclude that e-transferring the rent within a day or two after the first of the month was acceptable to her. Therefore, the proper question was whether Ms. Louie could rely on past instances of rent not being paid on the first of the month to terminate the tenancy agreement when for years she had acquiesced in the manner that rent was paid. Specifically, had Ms. Louie represented through her conduct and communications that she did not require strict compliance with the term of the tenancy agreement stating that rent must be paid on the first day of the month."

Although the case above dealt with a longer-term tenancy than in this case, I still consider that the undisputed evidence of near consecutive rent payments made a few days late over period of 15 months establishes a pattern of conduct by the Landlord that the Tenant relied upon. The lack of concern about late payments is illustrated as well by the lack of any late rent fee provided for in the tenancy agreement. Further, while the Landlord gives evidence of being informed at the time of purchase that rents were being paid, the Landlord does not dispute that the rents were being paid late prior to the purchase indicating that the Landlord knew full well that the Tenants were paying rent

late. Given the pattern of late rent to the point of the Landlord's purchase I find that the Landlord inherited a tenancy where the landlord acquiesced to the late rent payments. Further given this existing acquiescence and by choosing to sit on their hands after the purchase without informing the Tenants of a strict requirement of the rental term I find that the Landlord continued the acquiescence and, in the circumstances, it would be unjust to end the tenancy. I therefore cancel the Notice and the tenancy continues.

As the Tenants have been successful with its claim, I find that the Tenants are entitled to recovery of the \$100.00 filing fee and the Tenants may deduct this amount from future rent payable in full satisfaction of this claim.

#### Conclusion

The Notice is cancelled, and the tenancy continues.

I grant the Tenants an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the RTB under Section 9.1(1) of the Act.

Dated: September 22, 2021

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Residential Tenancy Branch