



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, RR, LAT, OLC, LRE, FFT

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking the following relief:

- an order cancelling a notice to end the tenancy for cause;
- an order reducing rent for repairs, services of facilities agreed upon but not provided;
- an order permitting the tenant to change the locks to the rental unit;
- an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement;
- an order limiting or setting conditions on the landlord's right to enter the rental unit; and
- to recover the filing fee from the landlord for the cost of the application.

The tenant and Legal Counsel for the landlord attended the hearing. Legal Counsel for the landlord stated that the landlord named in the tenant's application is actually another Legal Counsel for the landlord, and the landlord who attended this hearing (GP) is the landlord. Therefore, I amend the tenant's application to properly name the landlord as in the tenancy agreement, and the frontal page of this Decision reflects that amendment.

The parties each gave affirmed testimony, and were given the opportunity to question each other and to give submissions.

The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

At the commencement of the hearing I had indicated to the parties that the Rules of Procedure require that multiple applications contained in a single application must be related, and the hearing focused only on the tenant's application for an order cancelling a notice to end the tenancy for cause.

### Issue(s) to be Decided

Has the landlord established that the notice to end the tenancy was given in accordance with the *Residential Tenancy Act*?

### Background and Evidence

**The landlord** testified that this fixed term tenancy began on October 1, 2017 for 1 year, then another fixed term was agreed to, following which the tenancy reverted to a month-to-month tenancy. The tenant still resides in the rental unit. Rent in the amount of \$1,900.00 was payable on the 1<sup>st</sup> day of each month, which has been raised over time and is now \$2,072.00. Rent for September, 2021 has not been paid. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of half the rent at the time, and no pet damage deposit was collected. The rental unit is a townhouse, and the landlord does not reside on the property.

The landlord has owned the triplex and 1 lane house for about 23 years. For the last few years the landlord had problems with bounced cheques by some tenants. In September, 2017 the landlord required that rent be paid in cash; when a tenant calls, the landlord attends and collects the rent. Some put it in an envelope, which was sometimes \$100.00 short, so the landlord started to require the tenant to count the cash in front of the landlord.

Receipts have been provided as evidence for this hearing, and the date bears the date that the tenant called the landlord. If the landlord couldn't make it that day, he dated the receipt the day of the tenant's phone call, even if the landlord collected the cash later.

When tenants are late with rent, they usually say that they're sorry, and that's the end of it. However the landlord is on the property every day and lives 2 blocks away. The agreement requires rent on the 1<sup>st</sup> of the month, which is the tenant's obligation. The Addendum to the tenancy agreement specifies payment policies: "When the tenant's moves in the first month rent, the damage deposit and the last month's rent the tenant agrees to pay cash: for that matter. Every month of the tenancy can be paid in cash. Easier for both parties, the cheques always cause confusions."

The landlord has also provided a receipt book and handwritten ledger and testified that the tenant paid rent late on May 5, 2021 and on April 6, 2021 and on February 7, 2021. Sometimes, especially when the parties ran into each other or when the landlord was on the property the tenant would say that rent was ready, and the landlord took it, but that happened very seldom. The tenant was late with rent on more than 3 occasions over the last 18 months. Over 16 months, the tenant only paid on time twice.

During questioning by the tenant, the tenant asked if the landlord wasn't asked more than 3 times about a different method of payment to make it easier, and the landlord did not answer the question, but said the best way is to go by what the lease says. However, the landlord couldn't recall voice messages, notes and conversations wherein the landlord refused, and doesn't remember any offer by the tenant to set up on-line banking.

**The tenant** testified that the landlord has never spoken to the tenant with issues of late rent; it's the way things have been done since 2017 with no verbal or written discussion about late rent. Only after 2 previous hearings, the landlord went to a lawyer to find another way to deal with the tenant and then gave a notice to end the tenancy. If the landlord was irritated at all, things could have been sorted out years ago, but the landlord never mentioned it.

Often the landlord's phone is off, or he can't find it, and requires cash only. The tenant doesn't pay with cheques because the landlord loses them or doesn't deposit them within 6 months, and they bounce when he gets around to depositing them.

The parties attended a hearing on April 23, 2021 and the resulting Decision has been provided as evidence for this hearing. The tenant had made an Application for Dispute Resolution claiming an order that the landlord make emergency repairs for health or safety reasons, and to recover the filing fee from the landlord. The Arbitrator's Analysis portion states that the Arbitrator made a finding that the leak falls into the emergency repair Section of the *Act*, and that the landlord had been aware of it for a significant period of time and failed to remedy it in a timely matter. The landlord was ordered to hire a qualified professional to investigate and assess the nature of the leak within a week of receipt of the Decision. The Decision also orders the landlord to make repairs by a qualified professional within a week of receiving the assessment of repairs required. The tenant was successful in recovering the filing fee.

The parties also attended a hearing on May 20, 2021, and a copy of the resulting Decision has been provided dated May 27, 2021. The tenant had applied for an order that the landlord make repairs to the rental unit or property; an order reducing rent for

repairs, services or facilities agreed upon but not provided, and to recover the filing fee. The landlord was ordered to make repairs, and the tenant was awarded compensation amount of \$2,050.00, including the filing fee, which the tenant was permitted to deduct from rent. Also, a rent reduction was ordered to continue until the landlord applied for an order to modify the reduced rent and that the repairs were made.

The tenant testified that the Arbitrators found that the landlord acted in bad faith, it was stressful and unnecessary. No rent was payable for October, 2021 because of the emergency repair order; and rent is \$0.00 until the landlord deals with the repair issues.

On May 6, 2021 the tenant asked the landlord to fix the baseboards and he said, "You're going to be in big trouble." Evidence shows that the landlord has been trying to evict the tenant since the dispute hearings took place.

#### SUBMISSIONS OF THE LANDLORD'S LEGAL COUNSEL:

There are personal issues between the parties, however the grounds for issuing the notice to end the tenancy have been proven by more than 3 late payments. The tenant's testimony about bad faith is speculative and unfounded, and the landlord doesn't have to prove good faith. The burden is on the landlord to prove late rent, and there is nothing to justify it. Previous hearings are being dealt with by the landlord separately. Giving the notice to end the tenancy is fair and the landlord was within his rights to issue it, and the tenant has not denied when rent is due or when it was paid. The minimum number of late payments to justify repeated late rent is 3.

#### SUBMISSIONS OF THE TENANT:

The tenant has provided a case Decision dated July 13, 2009, wherein the Arbitrator found that the landlord had established a pattern of accepting late rent payments from the tenant and the tenant relied on the pattern to continue to pay late. It also states that the landlord may not now try to strictly enforce the notice without notice to end the tenancy, and it was cancelled.

For 4 years there was no verbal or written statement from the landlord that rent was late. The landlord had already established the way rent was paid, despite the tenant attempting to help him accept a different method of payment. The landlord is elderly and does not want to have to deal with the issues previously ordered.

### Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. In this case the tenant disputes repeated late rent.

I accept the tenant's submission with respect to Estoppel, which is a doctrine that prevents a party from enforcing a legal right as against another person if a pattern has been established that the other person has relied on. The payment of rent in the manner that it has been paid definitely establishes a pattern. To now claim that the tenant is repeatedly late paying rent after 4 years is not justified.

Given the landlord's inability to remember certain things during cross examination, I also accept the tenant's testimony that the landlord would lose cheques or deposit them long after receiving them. I am not satisfied that the landlord has kept accurate records, and a landlord may not refuse rent regardless of the payment method.

At the commencement of the hearing I questioned the landlord about basics in the tenancy, such as dates and amount of rent, and then I referred questioning to the landlord's Legal Counsel for in-chief evidence. The landlord has provided a copy of a One Month Notice to End Tenancy for Cause, but at no time did either of the parties indicate what was actually served on the tenant. I can take judicial notice of the evidence, but there is no Proof of Service document indicating who served it or how or when. The form has boxes checked off that indicate it was served in person to the tenant or an agent or with an adult (over 19) who apparently lives with the tenant and by attaching a copy to the door or other conspicuous place where the tenant resides. That is not sufficient proof of service.

Therefore, I cancel the Notice and the tenancy continues.

Since the tenant has been partially successful with the application the tenant is also entitled to recovery of the \$100.00 filing fee and I order that the tenant be permitted to reduce rent for a future month by that amount or may otherwise recover it by filing it for enforcement in the Provincial Court of British Columbia, Small Claims division as a judgment.

The balance of the tenant's application is dismissed with leave to reapply.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause is hereby cancelled and the tenancy continues.

I hereby grant a monetary order in favour of the tenant in the amount of \$100.00 and I order that the tenant be permitted to reduce rent for a future month by that amount or may otherwise recover it.

The balance of the tenant's application is hereby dismissed with leave to reapply.

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: October 07, 2021

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Residential Tenancy Branch