



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC

### Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenant on October 10, 2022, under the *Residential Tenancy Act* (the Act), seeking:

- Cancellation of a One Month Notice to End Tenancy for Cause (One Month Notice).

The hearing was convened by telephone conference call at 11:00 A.M. (Pacific Time) on December 9, 2022, and was attended by the Tenant, the Landlord, and an agent for the Landlord S.J. (Agent). All testimony provided was affirmed. As the Agent acknowledged service of the Notice of Dispute Resolution Proceeding (NODRP) on behalf of the Landlord, and stated that there are no concerns regarding the service date or method, the hearing proceeded as scheduled. As the parties acknowledged receipt of each other's documentary evidence, and raised no concerns with regards to service dates or methods, I accepted the documentary evidence before me for consideration. The parties were provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

The parties were advised that pursuant to rule 6.10 of the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The parties were also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration as set out above, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses confirmed in the hearing.

### Preliminary Matters

Although the parties engaged in lengthy settlement discussions pursuant to section 63 of the Act, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision under the authority granted to me by the Director of the Residential Tenancy Branch (the Branch) under section 9.1(1) of the Act.

### Issue(s) to be Decided

Is the Tenant entitled to cancellation of a One Month Notice, and if not, is the Landlord entitled to an Order of Possession pursuant to section 55(1) of the Act?

### Background and Evidence

The parties agreed that the periodic (month-to-month) tenancy commenced on July 10, 2022, and that rent in the amount of \$1,300.00 is due each month. The parties agreed that at the time the tenancy agreement was entered into, and at the time the Tenant moved into the rental unit, only a verbal tenancy agreement existed between them. The parties also agreed that a written tenancy agreement was subsequently signed on August 3, 2022, but disagreed about whether it accurately represented the verbal agreement initially in place, specifically with regards to when rent was due, and whether it was valid and enforceable.

The Tenant stated that according to the verbal tenancy agreement they could pay the \$1,300.00 in rent by making bi-weekly payments, on their payday, in the amount of \$650.00, which is what they have been doing since the start of the tenancy. Although the Landlord and Agent agreed that the Tenant had been paying the \$1,300.00 in rent due each month over multiple payments, they disagreed that this was the payment schedule agreed to. The Landlord and Agent stated that the Tenant has always been required to pay the \$1,300.00 in rent in full on the first day of each month, and that

when it became clear to the Landlord that the Tenant was not honoring that verbal agreement, the Landlord had their Agent, who is also their adult child, attend the rental unit and sign the written tenancy agreement in the documentary evidence before me. The Agent stated that this agreement accurately characterizes the terms of the verbal agreement entered into, but simply puts it in writing. The Tenant disagreed.

The Tenant argued that when the Agent attended their rental unit with the written tenancy agreement, they felt rushed and pressured to sign the agreement without proper time to review and consider it. They also stated that even though it stated that rent in the amount of \$1,300.00 was due in full on the first day of each month, they were advised by the Agent that the Landlord would continue to honor their bi-weekly payment agreement. The Tenant stated that they regret signing the agreement as it did not accurately reflect the terms of their original verbal agreement, and argued that the Landlord should have been present because the Agent was not there at the time the verbal tenancy agreement was entered into and therefore does not know what the terms were.

The Agent denied advising the Tenant that the Landlord would honor a rent payment schedule not shown in the written tenancy agreement and denied pressuring the Tenant to sign the tenancy agreement. They also stated that the meeting to sign the written agreement was scheduled with the Tenant in advance, that they went through the tenancy agreement with the Tenant, and that the Tenant had ample time to review it before deciding to sign it.

The Agent stated that when the Tenant continued not to abide by the payment terms of both the verbal and written tenancy agreement, a One Month Notice was served on the Tenant on October 10, 2022, and at the hearing the Tenant confirmed receipt on that date. The One Month Notice in the documentary evidence before me is on a 2021 version of the Branch form, is signed and dated October 10, 2022, contains the address for the rental unit, and has an effective date of November 30, 2022. The One Month Notice states that the reason the notice has been issued is because the Tenant has been repeatedly late in paying their rent. Details regarding the Tenant's late rent payment history were provided in the details of cause section.

The Tenant called into question the validity of the One Month Notice stating that if there had not been a verbal agreement in place for them to make their rent payments bi-weekly, why had the Landlord waited so long to issue the One Month Notice and why had they continued to accept rent in that fashion. The Agent stated that the Landlord

had remained hopeful that the Tenant would eventually comply and had given them the benefit of the doubt. They also stated that the Landlord had accepted the rent payments, regardless of the amounts or their dates, as they are on a limited income and needed the money to pay the mortgage.

The Agent stated that if the Tenant's Application is dismissed and the One Month Notice is upheld, the Landlord wants an Order of Possession for December 31, 2022, as the Tenant still owes half a month's rent for October and full rent for November and December. The Tenant denied that any rent was outstanding for October but acknowledged that they had not paid rent for November or December. Regardless, the Tenant stated that they simply would not be able to vacate by December 31, 2022, as they have a pet and do not have money for November or December rent, let alone a security and pet damage deposit or rent for a new place. As a result, they argued that an Order of Possession for December 31, 2022, would be unreasonable.

Both parties submitted documentary evidence for my consideration including but not limited to copies of the written tenancy agreement, the One Month Notice, written submissions, copies of correspondence between them, rent receipts, and documentation regarding rent payment history.

### Analysis

Based on the documentary evidence and testimony before me for consideration, I am satisfied that a tenancy agreement to which the Act applies exists between the parties and that \$1,300.00 in rent is due under the tenancy agreement each month. I am also satisfied that the One Month Notice in the documentary evidence before me was served on and received by the Tenant on October 10, 2022. As the Tenant filed the Application on October 10, 2022, I find that they disputed the One Month Notice on time.

Although the parties disagreed about the rent payment terms of the initial verbal tenancy agreement between them, they agreed that a written tenancy agreement was signed on August 3, 2022, wherein it states that rent in the amount of \$1,300.00 is due on the first day of each month. Although the Tenant argued that this written tenancy agreement should not be considered valid, I disagree for the following reasons. Although the Tenant argued that as the written tenancy agreement does not reflect the payment terms of the initial verbal tenancy agreement and should therefore be invalid, I find that there was no obligation for the Tenant to sign the written tenancy agreement if they did not either agree that it accurately reflects the terms of the initial verbal

agreement or they did not agree to the changes, as verbal tenancy agreements meet the definition of a tenancy agreement under section 1 of the Act and are enforceable. I therefore dismiss this argument by the Tenant.

The Tenant also argued that as the Agent advised them that the Landlord would continue to honor their bi-weekly payment agreement they should not be bound by the strict terms of the written tenancy agreement with regards to when rent is due, however, the Agent denied any such verbal agreement at the hearing. As the Agent denied this agreement, and no documentary evidence was submitted by the Tenant which satisfies me on a balance of probabilities that this verbal agreement with the Agent existed despite what the written tenancy agreement states, I therefore find that the written tenancy agreement is the best evidence before me with regards to the terms of the tenancy agreement as of August 3, 2022, and I therefore rely upon it for determination of the terms mutually agreed to by the parties on that date. As a result, I am satisfied that the parties agreed in writing on August 3, 2022, that rent in the amount of \$1,300.00 is due on the first day of each month, regardless of any previous agreements, verbal or otherwise.

Regardless of what the terms of the initial verbal agreement were regarding when rent payments are due, I find that section 14(2) of the Act permitted the parties to change the terms relating to the rent payment schedule by way of mutual agreement. As a result, I am satisfied that rent in the amount of \$1,300.00 is due on the first day of each month under the tenancy agreement as of August 3, 2022.

Finally, I also dismiss the Tenant's argument that they were under duress at the time of signing the written tenancy agreement and therefore it is invalid. The Tenant submitted no documentary or other evidence that would satisfy me on a balance of probabilities that the written tenancy agreement was signed on August 3, 2022, under duress. While I appreciate that the Tenant had company over at the time of signing the tenancy agreement, and that they therefore did not want to spend a great deal of time reading the terms of the tenancy agreement, I am not satisfied that the Tenant was in any way coerced or forced into signing the agreement by the Agent. Instead, I am satisfied that the Tenant signed it of their own free will, even though they may have done so against their better judgement, which they now regret. Further to this, I am not satisfied by the Tenant on a balance of probabilities that they were prevented from reading or understanding the terms of the written tenancy agreement by the Agent before signing it and find it more likely than not that if the Tenant did not fully read the terms of the agreement before signing it, they did this by choice, perhaps so as not to further delay

their visit with their guest. I therefore find that they are bound by the terms of this written tenancy agreement, regardless of whether they fully read it in advance.

Having decided that the written tenancy agreement signed on August 3, 2022, is valid and enforceable, I will now turn to the matter of the verbal tenancy agreement in place between July 10, 2022 – August 3, 2022. Although the agent argued that the Tenant was always required to pay rent in full on the first day of each month, the Tenant denied this, and I find that neither the Agent nor the Landlord, who bears the burden of proof with regards to validity of the One Month Notice, have submitted compelling evidence that this was the case. In contrast, the Tenant has submitted copies of many written conversations between themselves and the Landlord wherein they state that the verbal agreement was always that they pay rent every two weeks on their paydays in the amount of \$650.00. The Tenant also submitted rent receipts demonstrating that they have consistently paid rent twice a month, none of which state rent was late, and pointed out that they were not served a 10 Day Notice in either July or August.

Based on the above, I am satisfied on a balance of probabilities that the initial verbal agreement in place at the time the tenancy started was that rent could be paid every two weeks in the amount of \$650.00, up to a maximum of \$1,300.00 per month, and that this agreement was valid until it was replaced by the written tenancy agreement signed on August 3, 2022.

Section 26(1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the 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. Section 47(1)(b) of the Act states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent and Residential Tenancy Policy Guideline (Policy Guideline) #38 states that three late payments are the minimum number sufficient to justify a notice under section 47.

Based on the above, I find that the Tenant cannot be considered to have paid rent late in either July or August of 2022 under the verbal tenancy agreement for the purposes of section 47(1)(b) of the Act. Although I am satisfied that the Tenant failed to pay rent in the amount of \$1,300.00 on time and in full on September 1, 2022, October 1, 2022, November 1, 2022, and December 1, 2022, as the One Month Notice for repeated late payment of rent was served on October 10, 2022, I find that the Landlord was only entitled to count September and October as months in which the Tenant had paid rent late for the purposes of the One Month Notice. As Policy Guideline #38 necessitates at

least three late payments be made before the issuance of a One Month Notice under section 47(1)(b) of the Act, I therefore find that the Landlord did not have grounds, at the time the One Month Notice was served, to end the tenancy for that purpose. As a result, I grant the Tenant's Application seeking cancellation of the One Month Notice and deem it to be of no force or effect.

### Conclusion

I grant the Tenant's Application seeking cancellation of the One Month Notice. I therefore order that the One Month Notice dated October 10, 2022, is cancelled and order that the tenancy continue in full force and affect until it is ended by one or both of the parties in accordance with the Act.

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

Dated: December 16, 2022

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Residential Tenancy Branch