



# 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 by way of conference call on July 26, 2023 concerning an application made by the tenant seeking an order cancelling a One Month Notice to End Tenancy For Cause and to recover the filing fee from the landlords for the cost of the application. The hearing had been adjourned from May 30 and July 4, 2023 and my Interim Decisions were provided to the parties.

On July 26, 2023 the tenant attended the hearing with the tenant's mother who acted as agent for the tenant. One of the named landlords also attended. The tenant's agent and the landlord each gave affirmed testimony and the parties 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.

### Issue(s) to be Decided

Have the landlords established that the One Month Notice to End Tenancy For Cause was issued in accordance with the *Residential Tenancy Act*?

### Background and Evidence

**The landlord** testified that this fixed-term tenancy began on April 1, 2021 and reverted to a month-to-month tenancy after March 31, 2022 and the tenant still resides in the rental unit. Rent in the amount of \$1,100.00 was payable on the 1<sup>st</sup> day of each month, which was increased by \$22.00 effective January 1, 2023. The tenant actually moved into the rental unit in 2019, and a previous tenancy agreement, and the current tenancy

agreement have been provided for this hearing. In 2019 the landlords collected a security deposit from the tenant in the amount of \$550.00 as well as a pet damage deposit in the amount of \$550.00, both of which are still held in trust by the landlords. The rental unit is a basement suite, and the upper level is also rented.

The landlord further testified that on February 2, 2023 the landlord served the tenant with a One Month Notice to End Tenancy For Cause by registered mail, and a copy has been provided for this hearing. It is dated February 2, 2023 and contains an effective date of vacancy of March 31, 2023. The reason for issuing it states: Tenant is repeatedly late paying rent.

The tenant paid rent on the 2<sup>nd</sup> day of each of the following months: June, 2022 and September, 2022 and February, 2023. In June, 2022 the landlord sent a warning by email that rent is due on the 1<sup>st</sup> of the month. On September 2, 2022 the landlord also sent a reminder that rent had not been paid. In February, 2023 the landlord sent an email to remind the tenant that rent was late, and the Notice to end the tenancy.

Rent is usually paid by e-transfer, however the tenant could send post-dated cheques. The landlord thought that if the tenant wanted to, the tenant could set up pre-authorized debits or have a person pay the rent if there were emergencies.

The tenancy agreement provides for a late payment fee of \$50.00, however the landlord was not aware when the warnings were sent that the landlord couldn't charge that amount as a late fee, and didn't collect any late fees.

**The tenant's agent** is the tenant's mother, who attended the hearing on the 2 previous scheduled dates, and testified that the tenant has lived in the rental unit for 4 years, and none of the late payments were 24 hours late and were due to emergencies and unforeseen circumstances. Aside from those payments, none were late, but paid in full and on time or early.

Rent for February 1, 2023 was paid less than 24 hours late because the tenant's agent was in hospital; it was sent at 9:30 p.m. on February 2 and was accepted at 10:30 p.m. Rent for September, 2022 was less than 24 hours late due to having no access to the internet, and was paid on September 2 as soon as the tenant's agent had access to the internet. Rent for June, 2022 was less than 24 hours late, paid on June 2 with an apology due to another family emergency.

The tenant has a permanent disability and has trouble with finances, and the tenant's mother pays rent on the tenant's behalf. The only option to pay rent is by personal e-

transfer, and the landlords never warned of possible eviction. The tenant's agent tried to set up automatic transfers but was not able to because the landlords are not a company.

The Notice to end the tenancy was emailed to the tenant.

#### SUBMISSIONS OF THE LANDLORD:

If the tenant needs more time to vacate, the landlord will be content with an order of possession effective at the end of August or September, 2023.

#### SUBMISSIONS OF THE TENANT'S AGENT:

This has been very stressful; surgeries and illness. It's completely ridiculous, a cash grab to charge more rent for the apartment.

#### 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 reasons for issuing it. I have reviewed the One Month Notice to End Tenancy For Cause, and I find that it is in the approved form and contains information required by the *Act*. The reason for issuing it is in dispute.

I refer to Residential Tenancy Policy Guideline 38 – Repeated Late Payment of Rent, which states that 3 late payments are the minimum number sufficient to justify a notice for repeated late rent. It also states:

“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. 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.”

The Supreme Court considered a Judicial Review proceeding involving late payment of rent and a notice to end the tenancy, and whether the landlord was estopped from enforcing a notice to end the tenancy by past conduct. The tenant in that case paid the landlord by e-transfer. Some were late, but the landlord accepted it without complaint but with friendly reminders by the landlord.

The Court stated that ending a tenancy is a significant request only in accordance with the *Residential Tenancy Act*, and if disputed, an Arbitrator is required to consider the totality of the evidence. The Court also mentioned Policy Guideline 38 – Repeated Late Payment of

Rent, which must be considered but would be a legal failure by an Arbitrator to properly consider the statutory interpretation of Section 47 without considering the entire circumstances given the context in which Section 47 (1)(b) finds itself. The Court also stated that an Arbitrator is to consider that the context of Section 47 is serious enough to warrant eviction, and an Arbitrator is to consider 4 things:

1. the frequency of the defaults in the context of the length of the tenancy;
2. the length of default;
3. the content and communication between the parties in respect of any of the defaults; and
4. the expectations of the parties.

The Court also stated that, "The landlord was required to give the tenant reasonable notice that strict compliance would be enforced before taking steps to end the tenancy for late payments, and in this case, no such notice was provided to the tenants."

In this case, the tenancy began in 2019 and there is no evidence that rent was ever late until June, 2022. I also consider that none of the payments were 24 hours late. In considering the totality of the tenancy and the circumstances, I am not satisfied that the landlords can end the long-term tenancy for repeated late rent in these circumstances. Therefore, I cancel the Notice and the tenancy continues until it has ended in accordance with the law.

Since the tenant has been successful with the application the tenant is also entitled to recover the \$100.00 filing fee from the landlords. I grant a monetary order in favour of the tenant in that amount, and I order that the tenant be permitted to reduce rent for a future month by that amount, or may serve the landlord with the monetary order and file it for enforcement in the Provincial Court of British Columbia, Small Claims division as an order of that Court.

### Conclusion

For the reasons set out above, the One Month Notice to End Tenancy For Cause dated February 2, 2023 is hereby cancelled and the tenancy continues until it has ended in accordance with the law.

I hereby grant a monetary order in favour of the tenant as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* 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.

This order is final and binding and may be enforced.

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: July 27, 2023

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Residential Tenancy Branch