



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNC, LRE

### **Introduction:**

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the one month Notice to End Tenancy dated June 21, 2019
- b. An order suspending or setting conditions on the landlord's right to enter the rental unit.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the one month Notice to End Tenancy was personally served on the Tenant on June 21, 2019. Further I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing, by registered mail to where the landlord carries on business on July 4, 2019.

### **Issues to be Decided:**

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the one month Notice to End Tenancy dated June 21, 2019?
- b. Whether the tenant is entitled to an order suspending or setting conditions on the landlord's right to enter the rental unit?

### **Background and Evidence:**

The tenancy began approximately 4 years ago. The latest written tenancy agreement provides that the tenancy started on July 1, 2018 and continues on a month to month basis. The tenancy agreement provided that the tenant(s) would pay rent of \$650 per

month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$325 at the start of the tenancy.

Grounds for Termination:

The Notice to End Tenancy identifies the following grounds:

- Tenant is repeatedly late paying rent
- Tenant or a person permitted on the property by the tenant has:
  - put the landlord's property at significant risk
- Tenant has not done required repairs of damage to the unit/site

The landlord testified and provided receipts to show the following late rent payments:

- Rent for August 2018 paid on August 3, 2018
- Rent for October 2018 paid on October 11, 2018
- Rent for December 2018 paid on December 3, 2018
- Rent for March 2019 paid on May 15, 2019
- Rent for May 2019 paid on May 9, 2019
- The tenant tendered the rent for June on June 21, 2019. The landlord refused to accept the payment.

The landlord testified the tenant refused to provide post dated cheques and paid cash only.

The tenant testified that the rent was paid late because on occasion the office was closed when she went to pay the rent. Further, other occasions her pay date did not coincide with the start of the month and this caused the late payment. She further testified that the landlord did not make arrangements for the payment of the rent from the Ministry.

Policy Guideline #38 provides as follows:

“The *Residential Tenancy Act*<sup>1</sup> and the *Manufactured Home Park Tenancy Act*<sup>2</sup> both provide 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. 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

A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.

In exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.

Whether the landlord was inconvenienced or suffered damage as the result of any of the late payments is not a relevant factor in the operation of this provision.”

#### Analysis:

After carefully considering all of the evidence I determined that the landlord has established sufficient cause to end the tenancy. There have been more than 6 late payments in the last year. I do not accept the submission of the tenant that the late payments can be ignored because the landlord’s office was closed when she attempted to pay the rent. Similarly, the late payments cannot be justified because sometimes her work pay day did not coincide with the end of the month. Finally, I determined that it was not up to the landlord to arrange with the Ministry to arrange for direct payments. The tenant is responsible to ensure that to happen if that was what she wanted.

Both parties presented evidence as to the other two grounds set out in the Notice to End Tenancy. I determined that it was not necessary for me to consider those grounds given my determination on the issue of repeated late payments.

As a result I dismissed the tenant’s application to cancel the Notice to End Tenancy. I order that the tenancy shall end. As the tenancy is coming to an end I dismissed the tenant’s application for an order that the suspending or putting conditions on the landlord’s right to enter the rental unit.

#### Order for Possession:

The Residential Tenancy Act provides that where an arbitrator has dismissed a tenant’s application to cancel a Notice to End Tenancy, the arbitrator must grant an Order for Possession. As a result I granted the landlord an Order for Possession. I set the

effective date of the Order of Possession for August 31, 2019 as the rent has been paid for August. The landlord has made it clear to the tenant that they do not wish to reinstate the tenancy.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

**This decision is final and binding on the parties.**

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 22, 2019

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Residential Tenancy Branch