



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC

### Introduction

On December 10, 2019, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”).

The Tenant attended the hearing, and both Landlords attended the hearing as well. All in attendance provided a solemn affirmation.

The Tenant advised that she served each Landlord with a Notice of Hearing package by registered mail on December 14, 2019 and the Landlords confirmed receipt of these packages. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlords were served the Notice of Hearing package.

She acknowledged that she did not submit any evidence for consideration on this file.

The Landlords advised that they did not serve their evidence to the Tenant. As their evidence was not served, their evidence was excluded and not considered when rendering this decision.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I

must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

### Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, are the Landlords entitled to an Order of Possession?

### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that a tenancy agreement was signed between the parties commencing October 1, 2014 and that rent was currently established at \$1,090.00 per month, due on the first day of each month. A security deposit of \$525.00 and a pet damage deposit of \$525.00 were also paid.

The Landlords stated that they served the Notice to the Tenant by hand on December 6, 2019 and the Tenant confirmed that she received this document. The reason the Landlords served the Notice is because the "Tenant is repeatedly late paying rent."

Neither party submitted a copy of the Notice for consideration. As I was unable to view the relevant Notice to determine if it complied with Section 52 of the *Act*, in accordance with Rule 3.19 of the Rules of Procedure, I provided direction on requesting late evidence. A copy of the Notice, that is the subject of this dispute, was requested to be provided from the Landlords as it was essential to the matter at hand. A copy of this Notice was provided, by the Landlords during the hearing. The pertinent details and information on the Notice were reviewed during the hearing and all parties agreed to the accuracy of the content contained within. While the Landlords advised that their copy of the Notice is not signed, they testified that they signed the Tenant's copy. The Tenant was not prepared and did not have her copy of the Notice in front of her, but she believed that it was signed.

Based on the consistent testimony, when reviewing the Landlords' One Month Notice to End Tenancy for Cause to ensure that the Landlords have complied with the requirements as to the form and content of Section 52 of the *Act*, I am satisfied that the Notice meets all of the requirements of Section 52, and I find that it is a valid Notice.

Landlord B.S. advised that the tenancy agreement required rent to be paid on the first day of each month. However, since the summer of 2019, the Tenant had paid rent late multiple times. She stated that they would text the Tenant about the late payments and the Tenant would make excuses for the late payments and apologize. She stated that they had attempted to accommodate the Tenant by not pursuing the repeatedly late payment issue more assertively. In December 2019, when rent was late again, she submitted that the Tenant accused them of harassing her, and she mocked them.

Landlord K.S. advised that the Tenant paid rent via a direct bank transfer and that rent was paid on the following schedule:

- June 2019 rent posted on June 3, 2019
- July 2019 rent posted on July 4, 2019
- August 2019 rent posted on August 5, 2019
- September 2019 rent posted on September 3, 2019
- October 2019 rent posted on October 2, 2019
- December 2019 rent posted on December 3, 2019

He stated that he texted the Tenant about late payments of rent in July, August, September, and October, and the Tenant would give various reasons for the late rent and would then apologize.

The Tenant advised that she would always pay the Landlords the rent electronically on the first day of each month. However, she acknowledged that she paid rent late in August 2019. It was not her intention to pay rent late, but she was out of town, attending a wedding. She also acknowledged that she paid December 2019 rent late because her son was sick. Apart from these two instances though, she was adamant that she always made transfers of rent on the first of each month to the Landlords. She speculated that if the Landlords were not getting the rent on the first day of each month, that this would possibly be due to the bank's processes of delaying the transfer of funds.

## Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

I find it important to note that Landlords may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part as follows:

### ***Landlord's notice: cause***

**47** (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*

*(b) the tenant is repeatedly late paying rent;*

In addition, I note the wording of Policy Guideline #38 provides the following guidance regarding the circumstances whereby the Landlords 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...*

*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...*

Section 26(1) of the *Act* establishes that "a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *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."

The undisputed evidence before me is that the tenancy agreement requires the Tenant to pay all of the rent by the first of each month. While the Tenant solemnly affirmed to tell the truth at the beginning of the hearing, she testified that she had only paid rent late in August 2019 and December 2019, and she adamantly testified that there were no other incidents of late payments of rent. However, I find it important to note that as part of her Application for Dispute Resolution, she attached her bank statement of October 2019. In this statement, an electronic transfer of rent is made to the Landlords on October 2, 2019. As this is entirely contradictory to her solemnly affirmed testimony that

she never made any other late payments of rent, I find this causes me to question the credibility and reliability of the Tenant's testimony on the whole. I find that I am doubtful of the legitimacy of the Tenant's submissions about paying rent on time for other months. Furthermore, I find her suggestions of the delayed transfer of funds to be attributed to the bank's processes to be wholly unlikely, but more of an attempt to put forth a preposterous and blatant falsehood. As such, I find that I prefer the Landlords' testimony with respect to the issue or repeated late payment of rent.

Based on a balance of probabilities, I am satisfied that the Landlords' testimony is a more accurate portrayal of this scenario. Consequently, I am satisfied that there is a more likely than not a pattern of multiple late payments of rent throughout the months leading up to the issuance of the Notice.

Consequently, I uphold the Notice and find that the Landlords are entitled to an Order of Possession pursuant to Sections 52 and 55 of the *Act*. As such, the Order of Possession takes effect at **1:00 PM on February 29, 2020**.

### Conclusion

I dismiss the Tenant's Application and uphold the Notice. I grant an Order of Possession to the Landlords effective at **1:00 PM on February 29, 2020 after service of this Order** on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: February 7, 2020

---

Residential Tenancy Branch