



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## Decision

**Dispute Codes:** OPC, CNC, FF

## Introduction

This hearing dealt with two applications: 1) from the landlord for an order of possession and recovery of the filing fee for this application; and 2) from the tenant for cancellation of the notice to end tenancy for cause. Both parties, including the landlord's agent, participated in the hearing and gave affirmed testimony.

## Issues to be Decided

- Whether the landlord is entitled to an order of possession
- Whether the landlord is entitled to recovery of the filing fee
- Whether the tenant is entitled to cancellation of the notice to end tenancy

## Background and Evidence

There is no written residential tenancy agreement for this month-to-month tenancy which began on July 1, 2007. Up until very recently, rent in the amount of \$400.00 was payable in advance on the first day of each month. Effective either February 1 or March 1, 2009, rent was reduced by \$30.00 to \$370.00 per month as a result of the agreement reached between the parties to cancel the cable service to the unit. A security deposit of \$200.00 was collected at the start of tenancy.

The landlord issued a 1 month notice to end tenancy for cause dated February 2, 2009. Reasons for its issuance are identified on the notice as follows:

Tenant is repeatedly late paying rent

Tenant or a person permitted on the property by the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord

Tenant has engaged in illegal activity that has, or is likely to:

- adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord

The landlord submitted into evidence a copy of the 1 month notice dated February 2, 2009 which was served in person on the tenant on that same date.

Included in evidence submitted by the landlord were copies of two separate 10 day notices to end tenancy for unpaid rent, one dated February 2, 2009 and the other dated March 19, 2009. The parties agreed that February's rent had been paid in full on February 6, 2009, subsequent to issuance of the notice dated February 2, 2009. However, in relation to the notice dated March 19, 2009, the positions of the parties are in total opposition: the landlord claims that rent for March has not yet been paid, whereas the tenant claims he has indeed paid the rent for March.

The tenant testified that his rent was almost without exception paid on the first day of each month. He states that copies of receipts showing late payment of rent dating from June 2008 through to the present, are "false and fraudulent," do not include his (the tenant's) signature, and were never given to him on the occasions when he paid his rent.

The landlord agreed that he did not provide the tenant with receipts on the occasions when rent was paid, and stated that the receipts submitted into evidence simply serve as a record of the tenant's consistently late payment of rent. The landlord's witness testified that he had viewed the landlord's personal records which show a long-standing pattern of late payment of rent by the tenant. He further stated that the receipts are an accurate reflection of the landlord's records.

## **Analysis**

In order to decide the issues in this dispute, I have carefully weighed the testimony and documentary evidence presented by the parties. A test for assessing credibility is set out in *Faryna v. Chorny* [1952] 2 D.L.R. 354 (BCCA). In part, the test reads as follows:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject the story to an examination of its consistency with the probabilities that surround the story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of probabilities which a practical and informed person would readily recognize in that place and those circumstances....(pp. 356-357).

Based on the documentary evidence and testimony of the parties, I find that the tenant was served with a 1 month notice to end tenancy for cause dated February 2, 2009. The date shown on the notice by when the tenant must vacate the unit is March 31, 2009. The tenant disputed the notice by filing an application for dispute resolution within 10 days after receiving it.

As earlier stated, the landlord acknowledged that receipts were not routinely issued to the tenant when the tenant paid his rent; rather, the receipts submitted into evidence by the landlord are intended simply to document the pattern of late payment of rent. These receipts reveal a pattern of late payment of rent from June 2008 to the present. Payments appear to be late during this nine month period by anywhere from six to twenty-three days. Further, there is a record of issuance of two separate 10 day notices to end tenancy for unpaid rent and the parties take two diametrically opposing positions in regard to whether rent for the month of March 2009 has yet been paid.

Section 47(1) of the Act addresses **Landlord's notice: cause**, and provides, in part, as follows:

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;

Residential Tenancy Policy Guideline # 38 speaks to **Repeated Late Payment of Rent** and states, in part:

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.

On a balance of probabilities I prefer the evidence and testimony of the landlord and his witness over the evidence and testimony of the tenant. In short, I find that the landlord has met the burden of proof in showing he has cause to end this tenancy on the basis of the tenant's repeatedly late payment of rent. Accordingly, I dismiss the tenant's application to cancel a notice to end tenancy for cause, and I find that the landlord is entitled to an order of possession.

As the outcome of this hearing favours the landlord, I find that the landlord is entitled to recovery of the \$50.00 filing fee for this application. I therefore order that the landlord withhold this amount from the security deposit and return the balance of the security deposit plus interest to the tenant at the end of tenancy.

### **Conclusion**

I hereby issue an order of possession in favour of the landlord effective not later than **1:00 p.m., Tuesday, March 31, 2009**. This order must be served on the tenant.

Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

DATE: March 27, 2009

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Dispute Resolution Officer