



# Dispute Resolution Services

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

## Decision

**Dispute Codes:** CNC, OPC

### Introduction

This hearing dealt with the tenant's application for cancellation of a 1 month notice to end tenancy for cause. During the hearing the landlord made a verbal request for an order of possession. Both parties participated and gave affirmed testimony.

### Issues to be Decided

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

### Background and Evidence

While no copy of the agreement was before me, the parties testified that a written tenancy agreement provides for a fixed term tenancy from November 7, 2008 to October 31, 2009. Rent in the amount of \$1,500.00 is payable in advance on the first day of each month, and a security deposit of \$1,500.00 was collected on November 7, 2008.

The landlord issued a 1 month notice to end tenancy for cause dated April 10, 2009. A copy of the notice was submitted in evidence. Reasons identified on the notice for its issuance include, but are not limited to "Tenant is repeatedly late paying rent." The landlord testified that late payment of rent occurred in 2009 as follows:

January: rent received on January 5

February: rent received on February 3

March: rent received on March 2

April: at least a partial payment of rent received on April 3

The tenant did not dispute the landlord's testimony related to late payment of rent, as above. However, the tenant asserted that a verbal agreement had been reached between the parties near the outset of tenancy that occasional late payment of rent by up to several days would be acceptable. During the hearing the landlord disputed that any such agreement had been reached.

On his application for dispute resolution the tenant notes that the notice to end tenancy was received on April 13, 2009. However, the landlord's evidence is that the notice was served in person to the tenant on April 10, 2009 at 9:30 a.m. In support of his position the landlord submitted in evidence a copy of a Proof of Service witnessed by the landlord's father. In the "Optional Details" section of the Proof of Service the landlord identifies the tenant as having said, "You can't evict me, I paid partial rent."

Subsequently, the tenant's application for dispute resolution was filed on April 21, 2009.

### **Analysis**

Section 47 of the Act addresses **Landlord's notice: cause**. In particular, section 47(4) & (5) of the Act states:

47(4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

Based on the documentary evidence and the testimony of the parties, I find on a balance of probabilities that the tenant was served with the 1 month notice on April 10, 2009. Accordingly, the 10 day period within which the tenant's application for dispute

resolution was required to have been made ended on April 20, 2009. As the tenant's application was made outside of the 10 day period on April 21, 2009, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice. I therefore find that the landlord is entitled to an order of possession and that the tenant must vacate the unit by the effective date of the notice. Pursuant to section 53 of the Act, the effective date of the notice is 1:00 p.m., May 31, 2009.

I note that even if the tenant had filed his application within the prescribed time, the landlord has established grounds for ending the tenancy for cause on the basis of the tenant's repeatedly late payment of rent. In this regard, section 47(1)(b) of the Act states:

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;

Further, Residential Tenancy Policy Guideline # 38 addresses **Repeated Late Payment of Rent** and provides, in part:

Three late payments are the minimum number sufficient to justify a notice under these provisions.

### **Conclusion**

I dismiss the tenant's application for cancellation of the 1 month notice to end tenancy for cause.

I hereby issue an order of possession in favour of the landlord after service upon the tenant, effective not later than **1:00 p.m., May 31, 2009**. 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: May 28, 2009

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Dispute Resolution Officer