



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### Dispute Codes

OPR, CNR, CNC, & FF

### Introduction

This hearing dealt with cross applications by the parties. The landlord filed an application seeking an Order of Possession based on a one month Notice to End Tenancy for Cause. I note that the landlord incorrectly marked off the application form seeking an Order of Possession based on a 10 day Notice to End Tenancy due to Unpaid Rent. The tenant filed an application disputing both a 10 day Notice to End Tenancy due to Unpaid Rent and a one month Notice to End Tenancy for Cause.

The first hearing was adjourned because the landlord submitted the evidence late to the tenant. The landlord submitted that the tenant was avoiding service; however, I made no findings respecting this allegation and determined that it was appropriate to allow the tenant the opportunity to review the landlord's evidence and submit a response. The hearing was reconvened for July 28, 2009.

At the reconvened hearing I dealt with the tenant's subsequent late submissions of evidence. I have not accepted the tenant's late evidence as it was submitted late. As the first hearing was adjourned due to late submission of evidence by the landlord, I found it unacceptable that the tenant failed to provide his response in time.

### Issues(s) to be Decided

Should the two notices to end tenancy be set aside?

### Background and Evidence

This tenancy began on March 1, 2002 for the monthly rent of \$780.00 and a security deposit of \$350.00 and a hydro deposit of \$100.00.

On May 6, 2009 the landlord served the tenant with two notices to end tenancy. One was a 10 day Notice to End Tenancy due to Unpaid Rent and the other notice was a one month Notice to End Tenancy for Cause. In the one month notice the landlord provided the following reasons for ending the tenancy:

- the tenant is repeatedly late paying rent;

Residential Tenancy Branch  
Ministry of Housing and Social Development

- the tenant or a person permitted on the residential property by the tenant has (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
- the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property

To establish and support these claims the landlord presented a long list of alleged wrongs and actions which appear to have spanned the last six years of the tenancy. The landlord had two witnesses who testified to various circumstances in support of these allegations.

The landlord provided documentary evidence establishing that the tenant was repeatedly late paying rent. The documentary evidence shows that the tenant was late paying rent for February, March, April and May 2009. The tenant acknowledged the late payment of rent and stated that he was experiencing financial difficulties during this period but has been and will continue to be able to provide the rent as required.

## Analysis

The 10 day Notice to End Tenancy served by the landlord was on an outdated form and I find not in compliance with section 52 of the *Act* and therefore unenforceable.

Section 38 of the *Residential Tenancy Policy Guideline Manual* provides the following information respecting repeated late payment of rent:

*The Residential Tenancy Act and the Manufactured Home Park Tenancy Act 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.*

Section 8 of the manual defines a material term of a tenancy agreement as:

*A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.*



# Dispute Resolution Services

Page: 3

Residential Tenancy Branch  
Ministry of Housing and Social Development

I accept that the payment of rent is a material term of the tenancy agreement and that the legislation recognizes that failure to pay rent or to pay rent late repeatedly is grounds on which a landlord may end a tenancy. I find that the tenant was repeatedly late paying rent over the months of February, March, April and May 2009 and that the grounds to end this tenancy pursuant to section 47 have been met.

I grant the landlord's request for an Order of Possession effective **two (2) days** after it is served upon the tenant. I deny the tenant's application having determined that the one month Notice to End Tenancy has merit.

## Conclusion

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*.

The tenant's application is dismissed. I have found that the tenant was repeatedly late paying rent and the tenancy should end pursuant to notice served under section 47 of the *Act*. The landlord has been issued an Order of Possession. This Order may be filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

Dated: August 05, 2009.

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Dispute Resolution Officer