



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      OPC, FF

### Introduction

This hearing was scheduled to hear the landlord's request for an Order of Possession for cause and recovery of the filing fee paid for this application from the tenant. Both parties appeared at the hearing and were provided an opportunity to be heard.

### Issues(s) to be Decided

1. Has the landlord established an entitlement to end the tenancy for cause.
2. Award of the filing fee.

### Background and Evidence

Upon review of the tenancy agreement, I find that the tenancy commenced August 1, 2003 and the tenant was required to pay rent on the 1<sup>st</sup> day of every month. The landlord testified that the tenant paid rent late for the months of December 2007, May 2008, December 2008, February 2009 and April 2009 before a *1 Month Notice to End Tenancy for Cause* (the Notice) was issued on April 27, 2009. The Notice indicates the reasons for ending the tenancy were that the tenant has been repeatedly late paying rent and has assigned or sublet the rental unit without the landlord's consent. The tenant testified he was served with the Notice in person on April 24, 2009. The landlord testified that the Notice was posted on the tenant's door on April 27, 2009. The effective date of the Notice is May 31, 2009.

The tenant did not dispute that rent has been paid late in the months described by the landlord. The tenant explained that at the commencement of the tenancy he had told the property manager he is a subcontractor and occasionally his payments come in late and the property manager was fine with the occasional late payment as long as it was in

by the 15<sup>th</sup> of the month. The tenant also testified that there has been an issue with black mould in the rental unit and paying rent late was his way of protesting or getting the landlord's attention to deal with the mould.

On April 8, 2009, the parties participated in a dispute resolution proceeding to deal with the tenant's request for repairs and compensation for mould in the rental unit. The tenant was awarded \$750.00 which was applied towards outstanding rent for April 2009 and part of the rent payable for May 2009.

The landlord acknowledged that the tenant had paid rent for July 2009 and was willing to permit occupancy in the rental unit until July 31, 2009.

### Analysis

As the tenant did not dispute the Notice, it is of no consequence whether the Notice to End Tenancy was served upon the tenant in person on April 24, 2009 or posted on the door on April 27, 2009. Also, the effective date of May 31, 2009 is compliant with the Act for either service date and the five late payments had already occurred by the earliest date. Therefore, it is not necessary for me to make a finding as to which day the Notice was served upon the tenant as I am satisfied that the Notice was served upon the tenant and the tenant did not dispute the Notice.

Where a tenant is served with a *1 Month Notice to End Tenancy for Cause* under section 47 of the Act, the tenant must dispute the Notice within 10 days, otherwise the tenant is conclusively presumed to have accepted the tenancy will end on the effective date on the Notice. The tenant acknowledged he did not dispute the Notice; however, he did not vacate the unit on May 31, 2009. Rather, the tenant appeared to be waiting until the outcome of the landlord's application for an Order of Possession that was

heard during this hearing. I have considered whether the landlord had reasonable grounds to issue the Notice to End Tenancy.

Where a tenant repeatedly pays rent late the landlord may end the tenancy under section 47 of the Act by way of a 1 Month Notice. Pursuant to Residential Tenancy Policy Guideline 38, three late payments are the minimum number sufficient to justify a Notice to End Tenancy. In this case, the tenant was required to pay rent on the 1st day of the month in accordance with the terms of the tenancy agreement and after hearing testimony of both parties, I am satisfied that the tenant paid rent after the 1st day on five occasions prior to the issuance of the Notice to End Tenancy. Three of the five late rent payments were in more recent months. Therefore, I find the landlord was justified in serving the tenant with a 1 Month Notice as the tenant paid rent three times in a short period of time.

As explained to the parties during the hearing, section 26 of the Act provides 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 tenant was not authorized to make any deductions or withhold rent until the dispute resolution decision of April 8, 2009 was sent to the parties; however, I find the tenant was withholding rent for a period of a few days as a way of protesting inaction of the landlord prior to dispute resolution decision of April 8, 2009. In essence, although the landlord may have failed to repair the rental unit in a timely manner and violated the Act, that violation did not give the tenant the legal right to violate the tenancy agreement by paying rent late.

With respect to the tenant allegedly assigning or subletting the rental unit I find the landlord did not substantiate merit to this claim as I heard the tenant had been an occupant of the rental unit during the entire tenancy. It should be noted that allowing a roommate to move in does not constitute a sublet or assignment of a tenancy agreement. Permitting additional occupants or a roommate may be a breach of a material term of the tenancy agreement, but that reason was not indicated on the Notice to End Tenancy.

In summary, the landlord has established an entitlement to end the tenancy for repeated late payment of rent. Although the landlord accepted rent after the effective date from the tenant, by filing this request for an Order of Possession and serving the tenant with the hearing package, I do not find the landlord withdrew or waived its right to enforce the Notice to End Tenancy. Therefore, I grant the landlord's request for an Order of Possession effective date of July 31, 2009.

The landlord must serve the enclosed Order of Possession upon the tenant and may file it in The Supreme Court of British Columbia to enforce as an Order of that court.

The landlord is awarded the cost of the filing fee paid for this application. The landlord is authorized to deduct \$50.00 from the tenant's security deposit in satisfaction of this award.

### Conclusion

The tenancy has ended for cause and the landlord has been provided an Order of Possession effective July 31, 2009. The landlord is awarded the filing fee and is authorized to deduct \$50.00 from the tenant's security deposit in satisfaction of this award.



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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: July 07, 2009.

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Dispute Resolution Officer