

## **DECISION**

Dispute Codes      CNC, MNDC, OLC, ERP, RR, OPC, MND, MNSD, FF

### Introduction

This hearing dealt with an application by the tenants for an order setting aside a notice to end this tenancy, a monetary order, an order that the landlord comply with the Act and perform repairs and an order permitting the tenants to reduce their rent. The landlord made a cross-application for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of his claim. Both parties participated in the hearing.

In this decision where the word tenant is used in its singular form, it refers to the tenant L.N. who participated in the hearing, representing both herself and the tenant C.K.

The landlord had made an application for dispute resolution and provided evidence that his application for dispute resolution and notice of hearing (the “Hearing Documents”) were sent to the tenants via registered mail. The tenant denied having received any notice card from Canada Post advising that registered mail was available for pick-up. While service via registered mail is an acceptable form of service under the Act, in this instance, the parties live in the same residential premises and appear to share the same mailbox. Under these circumstances, I am not satisfied that the card from Canada Post advising the tenants that registered mail was available for them was not inadvertently intermixed with the landlord’s mail. I find that the tenants were not served with the Hearing Documents and I dismiss the landlord’s claim with leave to reapply.

### Issues to be Decided

Does the landlord have grounds to end this tenancy?

Are the tenants entitled to a monetary order as claimed?

Are the tenants entitled to other orders as claimed?

### Background and Evidence

The parties agreed that the tenancy began in August 2008 and that the rental unit is located on the lower floor of a home in which the landlord occupies the upper floor.

The landlord testified that he gave a one month notice to end tenancy for cause (the "Notice") on February 27 by placing the notice in the mailbox. The tenant acknowledged having received the Notice on March 2. The Notice makes a number of allegations, the first of which is that the tenants have repeatedly paid their rent late. The landlord testified that in the last 3 months the tenants have paid their rent on time but in the 5-6 months prior to that, they paid their rent in instalments throughout the month. The tenant acknowledged that there were 3-4 months in which rent was not paid on time but argued that the landlord "didn't have a problem with it" because they explained why the rent was late and he accepted the rent when it was offered. The landlord testified that he did not agree to accept the rent late, but was left with no alternative when the tenants explained that they were unable to pay on time. The tenant argued that the landlord routinely accepted rent late from other tenants.

Although testimony was given regarding other grounds to end the tenancy, I have not recorded this testimony in my decision for the reasons given below.

The tenants claim \$1,000.00 in compensation as they claim they have not had heat in the rental unit throughout the tenancy. The landlord testified that the home has 3 independent heating zones and that each of the three zones, the two rental units and the landlord's residence, has its own thermostat. The tenant acknowledged that her unit has a thermostat, but claimed that the landlord has turned off the heat. The landlord acknowledged having turned off the heat during the summer months but claimed it was on for the rest of the year. The tenant testified that she purchased space heaters over the past winter to help heat the unit. The landlord acknowledged that the hydro bill for the property has spiked significantly over the past winter.

The tenants seek an order that the landlord comply with the Act and provide them with a working heating system. The tenant testified that she only asked for a reduction in rent because she was advised to do so by an information officer.

### Analysis

Residential Tenancy Policy Guideline #38 provides that 3 late rental payments are sufficient to establish cause to end the tenancy. I do not accept that the tenants had the landlord's permission to pay rent late. Rather, I find that the landlord was left with no choice but to accept a late payment. The tenants were clearly aware that rent was due on the first of each month and I find that they failed to pay rent on the first of the month for at least 3 months. Accordingly I find that the landlord has established grounds to end this tenancy. The tenants' claim for an order setting aside the Notice is dismissed. During the hearing the landlord made a request under section 55 of the legislation for an order of possession. Under the provisions of section 55, upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. I find it appropriate to end the tenancy on May 31, 2010 and I grant the landlord an order of possession effective on that date. The tenants must continue to pay rent until the end of the tenancy. The tenants must be served with the order of possession. Should the tenants 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. As I have found that the landlord had grounds to end the tenancy on the basis of repeated late payment of rent I have not addressed the other grounds for ending the tenancy.

As for the tenants' claim for compensation for lack of heat, the tenants bear the burden of proving on the balance of probabilities that they suffered loss as a result of the landlord's negligence or breach of his contractual obligations. I find that the tenants have not proven their claim. The tenants did not provide temperature readings, witness statements or other evidence to corroborate their claim and I am unable to find that it is more likely than not that the heat has not worked properly. The claim is therefore

dismissed as is the claim for an order that the landlord comply with the Act and perform repairs.

I also dismiss the claim for a reduction in rent as no evidence was provided to support such a claim.

### Conclusion

The tenants' claim is dismissed in its entirety. The landlord is granted an order of possession effective May 31, 2010.

Dated: April 28, 2010

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