



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### Dispute Codes:

CNC

### Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause. In the Application for Dispute Resolution the Tenant declared that "My Landlord is kicking me out for no reason at all/he is a bully and a liar in my opinion and he never served me the papers properly".

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make submissions to me.

The Landlord submitted a package of evidence that was submitted to the Residential Tenancy Branch on October 26, 2010. The Landlord stated that copies of this evidence was personally served to the Tenant on October 27, 2010. The Tenant denies receiving this package of evidence.

I find that the package of evidence that the Landlord contends was personally served to the Tenant on October 27, 2010 was served on the Tenant on that date. I favored the Landlord's evidence over the Tenant's evidence in regards to the service of the evidence package, as I found the Landlord to be a more credible witness.

In determining credibility in regards to service of evidence, I find that the evidence strongly supports the position put forward by the Landlord and that it is in the Tenant's best interest to deny receiving this evidence. Conversely, it is in the Landlord's best interest to rely on the evidence in the package and there is little motivation for the Landlord to be dishonest about service of the evidence, given that the evidence package is not difficult to serve.

In determining credibility in regards to service of evidence, I was also influenced by a Notice to Vacate that is enclosed in the evidence package. The Landlord stated that he received this Notice to Vacate in his mail slot on October 06, 2010. The Tenant stated that he has never provided the Landlord with a Notice to Vacate. I have compared the writing on the Notice to Vacate with the writing on the Tenant's Application for Dispute Resolution and I find the writing to be remarkably similar. I have compared the

signature on the Notice to Vacate with the signature on the Tenant's Application for Dispute Resolution and I find there are significant similarities. Given that the Notice to Vacate has no relevance to this matter and there was, therefore, no need for the Landlord to fabricate the Notice to Vacate and the writing/signature causes me to believe that it was written by the Tenant, I find that the Tenant is not a particularly credible witness. As the credibility of this witness did not improve during the hearing, I do not accept his testimony that he was not personally served with the Landlord's package of evidence.

#### Issue(s) to be Decided

The issue to be decided is whether the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, should be set aside.

#### Background and Evidence

The Landlord and the Tenant agree that this tenancy began on May 01, 2006 and that the Tenant is currently required to pay rent of \$605.00 on the first day of each month.

The Landlord and the Tenant agree that a One Month Notice to End Tenancy for Cause, which was dated September 29, 2010, was posted on the door of the rental unit on September 29, 2010, which declared that the Tenant was required to vacate the rental unit by October 01, 2010. The reasons stated for the Notice to End Tenancy were that the Tenant has been repeatedly late paying his rent; that the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; that the Tenant or a person permitted on the property by the Tenant has seriously jeopardized the health, safety, or lawful interest of another occupant or the landlord; and that the Tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or well-being of another occupant.

The Landlord stated that he did not intend to end this tenancy on the basis that the Tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or well-being of another occupant. He stated that he selected those grounds in error.

The Landlord stated that shortly after posting the above Notice to End Tenancy he realized that the Notice was flawed; that he amended the effective date of the Notice to declare that the Tenant must vacate the rental unit by November 01, 2010; that he placed the amended Notice under the door of the rental unit on September 29, 2010, 2010; and that this Notice to End Tenancy was identical to the first Notice, with the exception of the effective date of the Notice. He stated that a few hours after placing this Notice to End Tenancy under the Tenant's door he found it inside the office mail box and noted that it had been ripped apart. The Tenant denied receiving the second Notice to End Tenancy.

The Landlord and the Tenant agree that, until recently the Province of British Columbia has been paying a portion of his rent and the Tenant has been paying an additional amount to the Landlord. The parties agree that the Tenant was paying an additional \$60.00 per month prior to July 01, 2010 and that he was required to pay additional rent of \$80.00 per month commencing on July 01, 2010.

The Tenant stated he paid the additional rent of \$80.00 for August on August 01, 2010. The Landlord stated that the additional rent was not paid until August 26, 2010. The Tenant stated he paid the additional rent of \$80.00 for July on July 01, 2010. The Landlord stated that the additional rent for July was not paid until July 09, 2010. The Tenant stated he paid the additional rent of \$60.00 for June on June 01, 2010. The Landlord stated that the additional rent for June was not paid until July 09, 2010. The Tenant stated that he paid the additional rent of \$60.00 for May on May 01, 2010. The Landlord stated that the additional rent for May was not paid until June 24, 2010. The Tenant stated that he paid the additional rent of \$60.00 for February on February 01, 2010. The Landlord stated that the additional rent for February was not paid until February 15, 2010.

The Landlord submitted a copy of a receipt dated August 26, 2010, which indicates it is for the remainder of rent for August; a copy of a receipt dated July 09, 2010, which indicates it is for the remainder of rent for June and July, in the amount of \$140.00; a copy of an illegible receipt that the Landlord declared was dated June 24, 2010, which indicates it is for the remainder of rent for May; and a copy of a receipt dated February 15, 2010, which indicates it is for the remainder of rent for February. These receipts were included in the evidence package that the Landlord contends was served to the Tenant on October 27, 2010, which the Tenant denies receiving and I have previously determined were received.

The Tenant stated that he no longer has receipts for rent, although he acknowledges that he was given receipts by the Landlord. He stated that the Landlord dated the receipts on the date that the receipt was written, not on the date the payment was made. The Landlord stated that the receipts show the date the rent is paid.

The Landlord stated that he wishes to end this tenancy, in part, because the Tenant has repeatedly disturbed other occupants. He stated that he has received numerous verbal complaints about the Tenant from other occupants regarding music in his rental unit, slamming doors, and arguments with his girlfriend.

He stated that he was working in a suite near the Tenant's rental unit on September 28, 2010 when he overheard the Tenant and his girlfriend arguing in the hallway. He stated that he heard the Tenant yelling loudly and using profanities but that he did not hear the girlfriend yelling. He stated that when he exited the suite the hallway was empty and when he returned approximately twenty minutes later the police were talking to the Tenant's girlfriend, who lives in a different suite in this residential complex.

The Tenant stated that on September 28, 2010 his girlfriend knocked on his door and

was yelling through the door. He opened the door to tell her to stop yelling but he contends that he did not yell at his girlfriend. He stated that his girlfriend was obviously upset so he left the complex prior to the police arriving.

The Witness for the Tenant stated that she is the Tenant's girlfriend; that she was drinking on September 28, 2010; that she knocked on the Tenant's door and was yelling at him; that her boyfriend asked her to leave but he did not yell at her, although his voice was raised; that he did not swear; and that he did not touch her in any manner, although she kicked at her boyfriend.

The Witness for the Landlord stated that she frequently overhears the Tenant arguing in the hallway with the Witness for the Tenant. She stated that in the latter portion of September of 2010 she overheard the Tenant and his girlfriend yelling in the hallway; that both of them were yelling loudly; that she came out into the hallway at which time she observed the Tenant grab the Witness for the Tenant by the throat.

The Witness for the Landlord stated that the Tenant has repeatedly disturbed her by slamming his doors and playing his music loudly. She estimates that she is disturbed by noise from the Tenant, either in the hallway or from within his rental unit, approximately five times per week. She stated that she has expressed her concerns to the Landlord and he has told her that he has spoken with the Tenant about the noise complaints. She stated that she has left a note on the Tenant's door advising him that he is disturbing her but that his behaviour has not changed.

The Landlord submitted a copy of a letter from occupants of the residential complex, who stated that during the past year they have been disturbed by the Tenant and his girlfriend on a weekly or bi-weekly basis. The authors of the letter declare that the parties slam doors, yell, and scream obscenities. They state that on one occasion the Tenant's girlfriend was in their rental unit and that the Tenant has pounded on their door and aggressively demanded that the girlfriend return home. The authors stated that on September 28, 2010 they overheard the parties fighting in the hallway and that they clearly heard the Tenant threaten to hire people to harm his girlfriend.

### Analysis

The undisputed evidence shows that the parties entered into a tenancy agreement for this rental unit; that the Tenant is currently required to pay rent of \$605.00 on the first day of each month; and that on September 29, 2010 the Tenant received a One Month Notice to End Tenancy, which had been posted on the door of his rental unit, which had a declared effective date of October 01, 2010.

Section 47(2) of the *Act* stipulates that a One Month Notice to End Tenancy for Cause must end the tenancy effective on a date that is not earlier than one month after the date the notice is received and the day before the day in the month that rent is payable under the tenancy agreement. As the Tenant is deemed to have received this Notice on September 29, 2010, and rent is due on the first of each month, the earliest effective

date of that the Notice is October 31, 2010.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of the One Month Notice to End Tenancy that was posted on the Tenant's door was October 31, 2010.

As the second One Month Notice to End Tenancy, which had a declared effective date of November 01, 2010, is superfluous, I find that I do not need to determine whether it was properly served upon the Tenant. I find that Landlord's statement that he found the second Notice ripped apart in his mail box to be a credible statement, given that fabricating this evidence does not benefit the Landlord in any significant manner. I find that statement is further supported by the copy of the Notice to End Tenancy that was submitted in evidence, which is clearly a photocopy of a document that has been torn.

The damaged One Month Notice to End Tenancy again tests the veracity of the Tenant's credibility. Although he adamantly declared that he did not receive the Notice to End Tenancy with an effective date of November 01, 2010, I find that is reasonable to believe that he did receive it and that he is most likely the person who damaged it and returned it to the Landlord's mail box.

In determining that the Tenant likely received the second One Month Notice to End Tenancy, I was influenced by the Tenant's Application for Dispute Resolution in which he declared that the Landlord never served him the "papers" properly. The pluralisation of the word "paper" causes me to believe that he was served more than one document, although he only acknowledges being served with one Notice to End Tenancy.

Section 47(1)(b) of the *Act* stipulates that a landlord may end a tenancy if the tenant is repeatedly late paying rent. In regards to these grounds for ending tenancy, I find that the Landlord has submitted sufficient evidence to establish, on the balance of probabilities, that the Tenant did not pay his portion of the rent when it was due on February 01, 2010, May 01, 2010, June 01, 2010, July 01, 2010, and August 01, 2010. In reaching this conclusion I was heavily influenced by the receipts that were submitted in evidence, which corroborate the Landlord's statements that the payments were not made when they were due and that refute the Tenant's statement that rent was paid on time each month.

I based this conclusion, in part, on my determination that the Tenant is not a highly credible witness. Without some evidence to corroborate his statement that the receipts issued to him by the Landlord were not dated on the date of payment or to refute the Landlord's statement that the receipts reflect the date of payment, I find that the written receipts are more reliable than the testimony of the Tenant.

Residential Tenancy Policy Guidelines suggest that three late payments of rent are sufficient to end a tenancy for repeatedly paying the rent late, and I find that this is

reasonable. As the Landlord has established that the Tenant was late paying his rent five times in 2010, I find that the Landlord has established grounds to end this tenancy, pursuant to section 47(1)(b) of the *Act*.

Section 47(1)(d)(i) of the *Act* stipulates that a landlord may end a tenancy if the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. I find that the Tenant significantly interfered with other occupants of the residential complex on September 28, 2010 when he and his girlfriend, who is also an occupant of the residential complex, were arguing in the hallway of the complex.

Although both the Tenant and his girlfriend deny that the Tenant was yelling and swearing, their version of events was contradicted by the Landlord and two occupants of the residential complex who overheard the Tenant behaving aggressively. I find that observations of the Landlord and the two occupants, who are largely independent, are more reliable than the testimony of the two individuals involved in the dispute, who are motivated to maintain this tenancy.

I find that the disturbance on September 28, 2010 generated a phone call to the police, which causes me to conclude that it was a significant and unreasonable disturbance. As the evidence provided by two occupants of the residential complex indicate that the disturbance on September 28, 2010 is a part of a pattern of disputes between these parties, I find that the Landlord has established that there are also grounds to end this tenancy pursuant to section 47(1)(d)(i) of the *Act*.

### Conclusion

As I have determined that the Landlord has grounds to end this tenancy pursuant to section 47 of the *Act*, I am dismissing the Tenant's application to set aside the One Month Notice to End Tenancy. I find that this tenancy ended on October 31, 2010, on the basis of the Notice to End Tenancy that was posted on the Tenant's door on September 29, 2010; that the Tenant is currently overholding the rental unit; and that the Tenant is obligated to vacate the rental unit.

The Landlord did not request an Order of Possession at the hearing. The Landlord retains the right to apply for an Order of Possession in the event the Tenant fails to vacate the rental unit.

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: November 02, 2010.

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Dispute Resolution Officer