



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

**Dispute Codes**      CNC, CNR, O

### **Introduction**

This hearing was convened by way of conference call to deal with the tenant's application for an order cancelling a 1 Month Notice to End Tenancy for Cause, and to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The landlord attended the conference call hearing scheduled for this date at 11:00 a.m., but the tenant (Applicant) had not appeared by 11:15 a.m. The landlord gave affirmed testimony, and relied on evidence provided by the tenant in advance of the hearing. All testimony and information provided has been reviewed and is considered in this Decision.

At the outset of the hearing, the landlord requested an Order of Possession.

### **Issues(s) to be Decided**

Is the tenant entitled to an order cancelling a 1 Month Notice to End Tenancy for Cause?

Is the tenant entitled to an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities?

Is the landlord entitled to an Order of Possession?

### **Background and Evidence**

This month-to-month tenancy began on August 1, 2010, and the tenant still resides in the rental unit. Rent in the amount of \$1,245.00 per month is payable in advance on the

1<sup>st</sup> day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$620.00.

The landlord testified that a letter was sent to the tenant on October 5, 2010 by the By-law Enforcement Officer which stated that the tenant was in violation of a City By-Law with respect to barking dogs creating a disturbance in the neighbourhood. On October 12, 2010 the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause which had attached to it a copy of the letter from the By-Law Enforcement Officer dated October 5, 2010. The notice to end the tenancy is dated October 12, 2010 and has an expected date of vacancy of November 30, 2010. The notice also states that:

- Tenant has allowed an unreasonable number of occupants in the unit/site;
- Tenant has engaged in illegal activity that has, or is likely to:
  - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
- Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property/park

Further, the landlord testified that the tenant failed to pay rent for the month of October, 2010, and on October 18, 2010 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by registered mail. That notice to end the tenancy is dated October 17, 2010, and states that the tenant has failed to pay rent in the amount of \$1,245.00 which was due on October 1, 2010 and contains an expected date of vacancy of October 29, 2010. The tenant further failed to pay rent for the month of November, 2010, and the tenant is now in arrears \$2,490.00. The landlord is requesting an Order of Possession.

## **Analysis**

Due to the failure of the tenant to attend the conference call hearing, I find that the Tenant's Application to request that the Notices to End the Tenancy be cancelled is not supported and must therefore be dismissed.

Based on the landlord's testimony I find that the tenant was served with a notice to end tenancy for non-payment of rent. I further find that the notice is deemed to have been served upon the tenant on October 23, 2010 pursuant to the *Residential Tenancy Act*. Further, Section 53 (1) and (2) of the *Act* states as follows:

**53** (1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.

(2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

I find that pursuant to Section 53 (1), the effective date of vacancy of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities is deemed to be November 2, 2010. The tenant has not paid the outstanding rent and has not applied for dispute resolution to dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

During the hearing the Landlord made a request for an Order of Possession. Under the provisions of section 55 (1) (a), 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.

## **Conclusion**

For the reasons set out above, the tenant's application is hereby dismissed in its entirety.

Based on the above facts I find that the landlord is entitled to an Order of Possession. The tenant must be served with the Order of Possession. 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.

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 19, 2010.

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Dispute Resolution Officer