

## **Decision**

**Dispute Codes:** MT, CNC, OPC, FF

### **Introduction**

This hearing dealt with the tenant's application for more time to make an application to cancel a notice to end tenancy / cancellation of a notice to end tenancy / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

In the event the tenant does not succeed in her application to have the notice to end tenancy set aside, during the hearing the landlord confirmed that she seeks to obtain an order of possession.

### **Issues to be decided**

- Whether either party is entitled to any of the above under the Act

### **Background and Evidence**

Pursuant to a written tenancy agreement, the original fixed term of tenancy was from April 1 to September 30, 2009. Thereafter, tenancy has continued on a month-to-month basis. Monthly rent is currently \$670.00, and is due and payable "on the last day of each prior month." A security deposit of \$650.00 was collected at the outset of tenancy.

The landlord issued a 1 month notice to end tenancy for cause dated November 10, 2010. The tenant filed an application to dispute the notice on November 17, 2010. A copy of the notice was submitted into evidence. Reasons shown on the notice for its issuance are as follows:

Tenant is repeatedly late paying rent

Tenant or a person permitted on the property by the tenant has:

significantly interfered with or unreasonably disturbed another occupant or the landlord

During the hearing the tenant did not dispute that, for a variety of different reasons, full payment of rent has been late for the following months:

October & November 2009

February, March, April, July, August & September, 2010.

### **Analysis**

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: [www.rto.gov.bc.ca/](http://www.rto.gov.bc.ca/)

Section 47 of the Act speaks to **Landlord's notice: cause**, and provides in part:

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(b) the tenant is repeatedly late paying rent;

Residential Tenancy Policy Guideline # 38 addresses "Repeated Late Payment of Rent," and provides in part:

Three late payments are the minimum number sufficient to justify a notice under these provisions.

Based on the documentary evidence and testimony of the parties, I find that the tenant was served with a 1 month notice to end tenancy for cause dated November 10, 2010. While the tenant failed to dispute the notice within the 10 day period permitted following her receipt of the notice, the tenant does not dispute that full payment of rent has been late on the eight (8) separate occasions as set out above. Accordingly, pursuant to the above provisions I find that the landlord is entitled to an order of possession.

As the tenant has not succeeded in her application to have the notice to end tenancy cancelled, the tenant's application to recover the filing fee is hereby dismissed.

As the end of tenancy approaches, the attention of the parties is specifically drawn to Part 2, Division 5 of the Act which is comprised of the following sections:

Section 35: **Condition inspection: end of tenancy**

Section 36: **Consequences for tenant and landlord if report requirements not met**

Section 37: **Leaving the rental unit at the end of a tenancy**

Section 38: **Return of security deposit and pet damage deposit**

Section 39: **Landlord may retain deposits if forwarding address not provided**

Further, Residential Tenancy Policy Guideline # 1 addresses "Landlord & Tenant – Responsibility for Residential Premises."

### **Conclusion**

Pursuant to the above, I hereby issue an **order of possession** in favour of the landlord effective not later than **1:00 p.m., Friday, December 31, 2010**. This order must be served on the tenant. 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.

DATE: December 13, 2010

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Dispute Resolution Officer