

## **DECISION**

**Dispute Codes:** *CNC, FF*

### **Introduction**

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy for cause. The tenant also applied for the recovery of the filing fee. Both parties attended the hearing and had opportunity to be heard. At the hearing the landlord made an oral request for an order of possession in the event that the tenant's application was not successful.

### **Issue to be Decided**

Does the landlord have grounds to end this tenancy?

### **Background and Evidence**

The tenancy began on August 01, 2010 for a fixed term of one year. The rent is \$1,400.00 due on the first of the month.

On December 01, 2010, the landlord served the tenant with a notice to end tenancy for cause. The notice to end tenancy was served on the tenant for being repeatedly late paying rent

The landlord's agent stated that she picks up the rent cheque on behalf of the landlord who is her son. She stated that at the tenant's request, she permitted the tenant to pay rent for September by a cheque dated September 07, 2010. The tenant argued that she paid rent on September 01, 2010 and filed a bank statement as evidence.

The landlord stated that on October 03, 2010, she visited the rental unit to pick up a rent cheque for October. The tenant gave her a postdated cheque for October 08. The landlord gave the tenant a written note which reminded the tenant that rent is due on the first of each month.

Despite the warning, the tenant gave the landlord rent cheques dated November 05 and December 08. The landlord stated that she went to pick them up on November 04 and December 05. The tenant argued that the cheques are dated the day the landlord arrived to pick them up. The tenant filed copies of the cheques into evidence.

### **Analysis**

In order to support the notice to end tenancy, the landlord must prove that the reason for the notice to end tenancy applies. Based on the testimony of both parties, I find that the tenant was repeatedly late paying rent.

Pursuant to section 38 of the *Residential Tenancy Policy Guideline*, three late payments are the minimum number sufficient to justify a notice under these provisions. The tenant was late in October, November and December 2010. Therefore, I find that the landlord has proven the reason to end the tenancy for cause and accordingly, I uphold the notice to end tenancy.

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(1), 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. 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.

### **Conclusion**

The notice to end tenancy is upheld and I grant the landlord an order of possession effective on or before 1:00 p.m. on January 31, 2011. The tenant must bear the cost of filing this application.

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: January 14, 2011.

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Residential Tenancy Branch