

## DECISION

Dispute Codes      CNC, FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause pursuant to section 47;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The parties agreed that the landlord handed the tenant the 1 Month Notice to End Tenancy for Cause (the Notice) on March 3, 2011. The parties agreed that the tenant handed the landlord a copy of her dispute resolution hearing package on March 18, 2011. I am satisfied that the tenant served this package to the landlord in accordance with the *Act*.

At the hearing, the landlord made an oral request for an Order of Possession effective on April 30, 2011, if the tenant's application to cancel the Notice were dismissed.

### Issues(s) to be Decided

Should the landlord's Notice to end Tenancy be cancelled? Should the landlord be issued an Order of Possession? Is the tenant entitled to recover her filing fee for this application from the landlord?

### Background and Evidence

This tenancy commenced initially as a two-year fixed term tenancy on May 28, 2007. After the expiration of the fixed term, the tenancy continued on a month-to-month basis. Monthly rent is set at \$3,250.00, payable on the first of each month. The landlord continues to hold the tenant's \$1,625.00 security deposit (plus interest) paid on \$1,625.00.

The landlord entered into written evidence a copy of her March 3, 2011 Notice. In that Notice, requiring the tenant to end this tenancy by April 30, 2011, the landlord indicated that she was seeking an end to this tenancy because the tenant is repeatedly late paying her rent.

The landlord presented undisputed oral and written evidence that the tenant has been frequently late in paying her monthly rent. Since October 2010, the tenant has provided a number of NSF cheques for her monthly rent. The landlord gave undisputed testimony that she has not received the full rent for any of the months commencing in October 2010 through March 2011. The tenant did not disagree with this evidence, although she said that on some of the occasions the landlord was “not happy” to receive the rent late, but “accepted” the tenant’s plan to pay the remainder of the rent. The tenant did not dispute that the tenancy should end; she instead wanted more time to end her tenancy and vacate the rental unit.

The landlord said that she obtained a monetary Order from a Dispute Resolution Officer (DRO) on February 3, 2011, for unpaid rent then owing. She said that she also received at that time a 2 day Order of Possession in response to her 10 Day Notice to End Tenancy for Unpaid Rent that she had presented to the DRO at that time.

#### Analysis

The landlord testified that she had not pursued the Order of Possession obtained for Unpaid Rent at the Supreme Court of B.C. She said that she had accepted rent from the tenant since obtaining her Order of Possession. The landlord’s acceptance of rent from the tenant following the issuance of the DRO’s February 3, 2011 decision and Order of Possession without stating that it was accepted for use and occupancy only had the effect of continuing this tenancy.

On March 3, 2011, the landlord served the tenant with a different type of notice to end this tenancy, the 1 Month Notice to End Tenancy for Cause for repeated late payment of her rent. I am satisfied by the undisputed evidence of the landlord that the tenant has frequently paid her rent late. Three recent late payments of rent are sufficient to demonstrate that there is a pattern of late rental payments sufficient to enable a landlord to end a tenancy for cause. In this case, the landlord provided many examples of late monthly payments and payments of NSF cheques, far more than were necessary to satisfy cancellation of this tenancy for cause. The landlord has presented compelling written and oral evidence that the tenant has been repeatedly late in paying all of her rent by the first of each month, the due date for her rent.

Consequently, I dismiss the tenant’s application to cancel the Notice. Pursuant to section 55(1) of the *Act*, I grant the landlord an Order of Possession to take effect at one o’clock in the afternoon on April 30, 2011. Section 55(1) of the *Act* reads as follows:

**55** (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of*

*possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

*(a) the landlord makes an oral request for an order of possession, and*

*(b) the director dismisses the tenant's application or upholds the landlord's notice.*

Since the tenant was not successful in her application, she bears responsibility for her filing fee for this application.

### Conclusion

I dismiss the tenant's application and provide the landlord with a formal copy of an Order of Possession effective at one o'clock in the afternoon on April 30, 2011. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The tenant bears responsibility for her filing fee for her 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*.

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