



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

CNC, FF

### Introduction

The tenant applied to cancel a 1 Month Notice ending tenancy for cause issued on June 8, 2011.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

### Preliminary Matters

The tenant submitted his application on June 01, 2011; however, the Notice ending tenancy as not issued until June 08, 2011. The tenant had applied on June 01, 2011, as the landlord issued a written letter, ending his tenancy. I determined that this hearing would proceed based upon the Notice issued in the approved form on June 08, 2011.

The landlord submitted evidence via facsimile on the morning of this hearing. As evidence must be served to the Residential Tenancy Branch at least 5 days prior to a hearing, I declined consideration of the late evidence.

Issue(s) to be Decided

Should the 1 Month Notice ending tenancy for repeated late payment of rent be cancelled?

Background and Evidence

The landlord and the tenant agree that a 1 Month Notice to End Tenancy for Cause was served on the tenant indicating that the tenant is required to vacate the rental unit on June 30, 2011.

The reason stated for the Notice to End Tenancy were that the tenant has been repeatedly late paying her rent.

The parties agreed that the tenancy commenced on July 01, 2009, rent in the sum of \$1,350.00 is due on the first day of each month. The landlord attends at the tenant's unit to request payment and then issues the tenant receipts. Payments are made in cash. The landlord lives on the residential property.

The landlord stated that the tenant is often late paying rent. The following late payments were alleged by the landlord:

- May 12, 2011;
- April, 2011 – late, but date unknown;
- December, 14, 2010;
- November 10, 2010; and
- August 3 and 10, 2010.

The landlord stated she has experienced some serious health problems since August 2010 and at times has not issued receipts. The landlord could not provide the date payment was made in April, 2011, but recalled it was not made on the first day of the month.

The landlord stated that she wants the tenant to move out of the rental unit and he must leave as quickly as possible. The landlord stated she is tired of repeatedly asking for the rent payments.

The tenant stated he does not keep all of his receipts and did not deny that he has been late paying rent at times. The tenant stated he did not always receive receipts on the date payments were made and that at times he paid rent early. The tenant stated that he is not always paid wages at the same time each month, which has caused some difficulty with rent payments.

### Analysis

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the tenant has repeatedly failed to pay rent on the date it is due.

I find, on the balance of probabilities that the tenant has not paid his rent on the first day of each month and that since August 2010; he has paid rent late on at least 4 occasions (May 2011, December, November and August, 2010.)

Residential Tenancy Branch policy suggests that 3 late payments are the minimum number sufficient to justify a Notice ending tenancy. The late payments do not need to be consecutive; they only must be considered as repeatedly late. A landlord who does not act in a timely manner after the most recent late payment could be determined to have waived the reliance on this provision of the Act. I find this to be a reasonable stance.

Therefore, as the tenant has failed to pay his rent on time on 4 occasions since August 2010, with the most recent late payment having been made in May, 2011; I find that the Notice ending tenancy issued on June 8, 2011, is of full force and effect and that the tenant's application is dismissed. I have also based this decision on the tenant's own admission that he has been late making payments as a result of the nature of his employment and payment of wages.

Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date is changed to July 31, 2011 at 1 p.m.

As the landlord stated she wanted the tenant to vacate the unit as soon as possible, I accepted this as a request for possession of the rental unit. Section 55(1) of the Act provides:

**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.*

I have dismissed the tenant's Application to cancel the Notice; and based upon the landlord's request that the tenant immediately move out I have issued the landlord an Order of possession effective July 31, 2011, at 1 p.m.

#### Conclusion

The tenant's application is dismissed.

The 1 Month Notice to End Tenancy, dated June 8, 2011 is of full force and effect.

The effective date of the Notice is changed to July 31, 2011.

The landlord has been granted an Order of possession that is effective **July 31, 2011, at 1 p.m.** This Order may be served on the tenant, filed with 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: June 23, 2011.

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Residential Tenancy Branch