



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OPC, MNSD, MNDC, FF

### Introduction

This hearing dealt with cross applications. The tenants applied to dispute a 1 Month Notice to End Tenancy for Cause and recover moving costs from the landlord for unlawful eviction. The landlord applied for an Order of Possession for cause, compensation for damage to the residential property, and authorization to retain the security deposit. Both parties appeared at the hearing and were provided the opportunity to make submissions and to respond to the submissions of the other party.

The tenants had submitted a large volume of evidence, including physical evidence, that I determined had not been served upon the landlord. The evidence supplied by the tenants that I considered relevant to this dispute was the original rent receipts issued to the tenants by the landlord. Although copies of the receipts were not served upon the landlord, I verified that those original receipts were identical to the copies supplied as evidence by the landlord. I also confirmed that both parties submitted identical copies of two 1 Month Notices to End Tenancy for Cause.

### Issue(s) to be Decided

1. Should the Notice to End Tenancy issued June 3, 2011 be upheld or cancelled?
2. Is the landlord entitled to an Order of Possession?
3. Are the tenants entitled to compensation for moving costs?
4. Is the landlord entitled to compensation for damage to the property?
5. Is the landlord authorized to retain all or part of the security deposit?

### Background and Evidence

The parties agreed that a co-tenancy commenced in July 2010 and that the tenants were required to pay rent of \$850.00 on the 1<sup>st</sup> day of every month. The tenants paid a \$425.00 security deposit. The parties agreed that the co-tenants are mother and daughter [herein referred to as “the mother” and “the daughter” or collectively as “the tenants”]. The landlord usually received \$425.00 directly from the Ministry on behalf of the daughter and the mother would pay the remainder to the landlord. The parties

agreed that the rent was reduced \$20.00 per month after the tenancy commenced for a change in cable service.

It is undisputed that the tenants received a 1 Month Notice to End Tenancy for Cause dated June 3, 2011 on their door; however, the parties were in dispute as to when the Notice was posted. The landlord submitted that the Notice was posted June 3, 2011 and the tenants submitted that it was posted June 1, 2011. The tenants disputed the Notice by filing an application on June 7, 2011. The tenants did not indicate in the details of dispute that the Notice is incorrectly dated or that it was received June 1, 2011.

The stated effective date on the Notice is July 3, 2011 and the reason for ending the tenancy, as indicated on page two of the Notice, is that the tenants are repeatedly late paying rent.

The landlord submitted that the tenants were late paying rent for three months: October 2010; February 2011; and, June 2011. The landlord testified as follows:

- the tenants paid \$800.00 on October 1, 2010 and the balance of \$50.00 on October 9, 2010 as reflected by the receipt;
- the mother paid only \$360.00 for rent on February 1, 2011 and owed \$40.00 as reflected by the receipt;
- the mother paid the balance owed for February 2011 sometime later although the landlord was not certain as to the date it was paid;
- on June 1, 2011 the mother advised the landlord that she had deposited a cheque and that the bank was holding it but that she would pay rent the following day;
- on June 3, 2011 the mother gave the landlord \$380.00 in cash and a cheque from the Ministry in the amount of \$425.00;
- upon receipt of payment the landlord issued rent receipts to the tenants by giving them to the tenants or taping them to the tenants' door; and,
- the landlord issued and posted the 1 Month Notice to End Tenancy for repeated late payment of rent on June 3, 2011.

The tenants responded to the landlord's submissions as follows:

- the tenants acknowledged that the rent for October 2010 and February 2011 was paid late;
- the mother gave the landlord \$380.00 in cash and the Ministry cheque of \$425.00 on May 31, 2011 and gave the balance of \$25.00 to the landlord on June 1, 2011;
- the tenants found the 1 Month Notice on their door on June 1, 2011;
- the landlord dated the receipt June 3, 2011; and,
- the landlord's real motives for ending the tenancy are due to the mother's medical condition.

The landlord acknowledged there were other issues with the tenancy but that ending the tenancy for repeated late payment was easily justifiable.

The tenant confirmed that she did not attempt to obtain a bank statement or withdrawal slip from the bank to confirm she withdrew monies on May 31, 2011 as she claimed.

I did not hear from the landlord with respect to her claims for damaged property as the tenancy has not yet ended. Rather, I informed the parties of the tenants' obligation to leave the property undamaged at the end of the tenancy and the landlord's right to make a subsequent application if the tenants leave the property damaged at the end of the tenancy.

I did not hear from the tenants with respect to their claims for moving costs as such costs had not been incurred and the lawfulness of this eviction notice is determined by way of this proceeding.

### Analysis

Section 47 of the Act provides that a landlord may end a tenancy by issuing a 1 Month Notice to End Tenancy for Cause if the tenant is repeatedly late paying rent. According to Residential Tenancy Policy Guideline 38, three late payments of rent are the minimum number to establish repeated late payment of rent. The policy guideline also states that the late payments do not have to be consecutive in order to justify ending the tenancy for repeated late payment of rent.

It was not in dispute that the tenants were late paying the full amount of rent due for the months of October 2010 and February 2011. However, the parties were in dispute as to the day rent was paid for the month of June 2011.

Considering the evidence before me, I have accepted the landlord's version of events over the tenants' for the following reasons:

- Upon review of the several rent receipts submitted as evidence by the tenants I note that the rent receipts reflect different days of the month that payment is made.
- The tenants did not indicate the landlord had incorrectly dated any of the receipts except the receipt for June's rent.
- The tenants stated on their Application for Dispute Resolution that "the last late rent by [the mother] only was late as the landlord stated she could give it in the morning" which is inconsistent with the submissions made by the tenants during the hearing.
- The tenants stated on their Application for Dispute Resolution that "[daughter's] rent always early as it goes direct from Ministry" yet the daughter acknowledged during the hearing that for the benefit month of June the tenant had to pick up the Income Assistance cheque from the Ministry and give it to the landlord.
- The tenants did not obtain documentary evidence to corroborate their position that the mother withdrew rent money from the bank on May 31, 2011.

In light of the above, I found the tenants' submissions inconsistent and lacking corroborating evidence. Therefore, I accept, on the balance of probabilities, that the tenants gave the landlord the rent for June 2011 on June 3, 2011 and the landlord posted a 1 Month Notice on the tenants' door on June 3, 2011.

Since I have found that the tenants paid rent late for June 2011 the landlord has shown that the tenants have paid rent late at least three times during their tenancy. Therefore, the landlord is within her rights to end the tenancy for repeated late payment of rent and I uphold the 1 Month Notice to End Tenancy issued June 3, 2011. The effective date has been automatically changed to read July 31, 2011 in accordance with section 53 of the Act.

The landlord is provided an Order of Possession effective July 31, 2011 to serve upon the tenants and enforce as an Order of The Supreme Court of British Columbia as necessary.

I award the filing fee to the landlord. The landlord is authorized to deduct \$50.00 from the tenants' security deposit in satisfaction of this award.

### Conclusion

The 1 Month Notice to End Tenancy has been upheld and the landlord has been provided an Order of Possession effective July 31, 2011 to serve upon the tenants.

The landlord's monetary claims for damages were dismissed with leave to reapply.

The tenants' monetary claim for moving costs have been dismissed.

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: July 5, 2011.

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Residential Tenancy Branch