

## **Decision**

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

### **Introduction**

This hearing was convened in response to an application by the tenant for more time to make an application to cancel a notice to end tenancy / cancellation of a notice to end tenancy for cause / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

### **Issues to be decided**

- Whether the tenant is entitled to any or all of the above under the Act

### **Background and Evidence**

Pursuant to a written tenancy agreement, the month-to-month tenancy began on July 1, 2007. The tenant's portion of rent is due in advance on the first day of each month.

Evidence submitted by the landlord includes, but is not limited to, four separate 10 day notices to end tenancy for unpaid rent or utilities dated, respectively, April 19, May 3, June 7 and July 5, 2011.

The landlord also issued a 1 month notice to end tenancy for cause dated July 4, 2011. A copy of the notice was submitted in evidence, and shows these reasons for issuance:

- 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
  - seriously jeopardized the health or safety or lawful right of another occupant or the landlord

The 1 month notice was sent to the tenant by registered mail, and processed at the postal facility on July 4, 2011. Pursuant to section 90 of the Act which speaks to **When documents are considered to have been received**, the notice is deemed served "on the 5<sup>th</sup> day after it is mailed," or in this case, July 9, 2011.

Evidence submitted by the landlord includes the Canada Post tracking number for the registered mail. The Canada Post website informs that on July 5, 2011, a notice card was left at the unit "indicating where item can be picked up." Ultimately, while the notice was returned to the landlord on August 15, 2011, a family member of the tenant's picked up a copy of the 1 month notice from the landlord's office on July 14, 2011.

Pursuant to section 47 of the Act which speaks to **Landlord's notice: cause**, the tenant has 10 days to file an application to dispute the notice. In this case, as the notice is deemed received on July 9, 2011, the tenth day is July 19, 2011. The tenant's application to dispute the notice was filed on July 20, 2011.

During the hearing the parties exchanged views on some of the circumstances surrounding the dispute and undertook to achieve an outcome acceptable to both.

### **Analysis**

Section 63 of the Act provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion between the parties during the hearing led to a resolution. Specifically, it was agreed as follows:

- that the tenant will vacate the unit by no later than Friday, September 30, 2011, and that an order of possession will be issued in favour of the landlord to that effect.

As the outcome of the hearing is not the same as that sought by the tenant in her application, the tenant's application to recover the filing fee is hereby dismissed.

### **Conclusion**

I hereby issue an **order of possession** in favour of the landlord effective not later than **1:00 p.m., Friday, September 30, 2011**. 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.

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*.

DATE: August 22, 2011

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Residential Tenancy Branch