



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

### **Dispute Codes:**

CNC, FF, ET

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a One-Month Notice to End Tenancy for Cause dated August 17, 2011 and effective September 30, 2011. This hearing was also convened to deal with an application from the landlord seeking an Order of Possession. The landlord requested that the tenancy be ended without Notice pursuant to section 56 of the Act.

Both the landlord and the tenant appeared and each gave testimony in turn.

### **Issue(s) to be Decided**

The issues to be determined based on the testimony and the evidence are:

- Whether the landlord is entitled to end the tenancy without Notice and obtain an Order of possession pursuant to section 56 of the Act
- Whether or not the One Month Notice to End Tenancy for Cause issued under section 47 of the Act should be cancelled as requested by the tenant.

The burden of proof is on the landlord to prove that the tenancy should be ended under one of the two sections outlined above .

### **Background and Evidence**

Submitted into evidence by the tenant in support the application was a copy of the One-Month Notice to End Tenancy dated August 17, 2011.

The landlord testified that he was seeking an immediate termination of the tenancy without Notice because the tenant had engaged in conduct that made it an urgent necessity to end the tenancy as soon as possible. The landlord stated that the tenant's offensive conduct included hollering and screaming while in an intoxicated state disturbing other residents and the landlord. The landlord testified that one incident that occurred some time ago involved the tenant's two guests seeking assistance from other occupants in the building. The landlord described another disturbing incident which

resulted in the police attending the residence and this caused alarm for the other occupants.

The landlord testified that, although there was a verbal agreement at the start of the tenancy that the tenant would refrain from smoking in the residence, the tenant has been smoking indoors. The landlord submitted a letter from another renter stating that she was disturbed by loud noises from the tenant's suite and also had an allergic reaction to the tenant's smoking.

The landlord testified that the tenant has a habit of not paying his rent in full on the first day of each month, and has become confrontational with the landlord on occasion. The landlord testified that a One Month Notice to End Tenancy for Cause was served on the tenant to end the tenancy on September 30, 2011, but the situation has become more intolerable and the landlord believes that the criteria under section 56 of the Act has been met to justify an immediate end to the tenancy without Notice.

The tenant testified that he was disputing both the One Month Notice to End Tenancy for Cause dated August 17, 2011 with effective date September 30, 2011 and the landlord's other application to end the tenancy immediately without notice. The tenant testified that he rarely raises his voice or makes any noise in his suite. According to the tenant, he does not have his TV turned up in the early hours of the morning as was alleged in the letter from another tenant.

The tenant testified that the incident involving police occurred because the tenant had accidentally dialed 911 in error. The tenant stated that he does not smoke indoors.

With respect to the accusation that he has been repeatedly late paying rent, the tenant stated that the landlord freely agreed to accept partial payments in the past. The tenant testified that his bank restricts the amount that can be withdrawn per day and he has sometimes had no choice but to wait an extra day to get the full amount for rent from his account. However, according to the tenant, this only occurred three or four times in the last two years. The tenant said that on one occasion, when he had consumed a couple of beers and the landlord showed up to collect the rent, insisting on getting the entire amount, the tenant asked him to drive him to his bank. The tenant testified that he did not get obnoxious nor confrontational with the landlord.

### **Analysis**

With respect to the landlord's application seeking an immediate end to the tenancy, I find that the landlord had the burden of proof to show that the tenancy should end immediately, based on the tenant unreasonably disturbing other occupants, or seriously jeopardizing the health, safety or lawful right or interest of the landlord and others. The

landlord would then be required to offer proof to satisfy the second part of the test by showing that it would be unreasonable or unfair to wait for a one month Notice to End Tenancy for Cause under section 47 of the *Act* to take effect.

Section 56 of the *Act* provides a remedy that is reserved for situations in which there is a serious measure of urgency, such as a genuine threat of imminent harm or significant liability risk that would warrant immediate termination of the tenancy without any notice first being served. I find that this situation does not meet the criteria to grant an order for the immediate termination of the tenancy under section 56 of the *Act*. Therefore I find that the landlord's application must be dismissed.

With respect to the tenant's application to cancel the One Month Notice to End Tenancy for Cause, I find that section 26 of the *Act* states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement. Section 47(1)(b) of the *Act* states that: *A landlord may end a tenancy by giving notice to end the tenancy if ... (b) the tenant is repeatedly late paying rent.*

I find that the tenant's testimony confirming that he had paid the rent late on 3 or more occasions in the past, would suffice to support the One Month Notice to End Tenancy for Cause.

Based on the testimony and evidence presented, I find that the One-Month Notice issued by the landlord dated August 17, 2011 is justified and cannot, under the circumstances, be cancelled. I find that the tenant's application must therefore be dismissed.

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 and dismissed a tenant's application to have the Notice cancelled.

Therefore I find that the landlord is entitled to an Order of Possession effective September 30, 2011 pursuant to the One Month Notice to End Tenancy for Cause.

### **Conclusion**

Based on the above, I hereby issue an Order of Possession in favour of the landlord effective September 30, 2011. 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.

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: September 12, 2011.

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Residential Tenancy Branch