



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## Decision

### Dispute Codes:

CNC, OLC.

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Notice to End Tenancy for Cause dated September 12, 2011. The application was also amended to include a request to cancel a Ten Day Notice to End Tenancy for Unpaid Rent. 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's issuance of the One-Month Notice to End Tenancy for Cause was warranted or whether the Notice should be cancelled as requested by the tenant.

Whether the landlord's Ten Day Notice to End Tenancy for Unpaid Rent should be cancelled as requested by the tenant.

The burden of proof is on the landlord/respondent to justify the validity of the Notices.

### Background and Evidence

Submitted into evidence by the applicant/tenant in support the application was a copy of the One-Month Notice to End Tenancy dated September 12, 2011, a copy of the subsequent Ten Day Notice to End Tenancy for Unpaid Rent , copies of communications and copies of receipts.

The landlord testified that the tenancy began in February 2011 with rent of \$825.00 and the tenant was required to pay a security deposit of \$400.00 at the start of the tenancy. The landlord testified that the tenant did not have all of the funds when the agreement was signed, so the tenant paid a portion of the deposit and was required to pay the remainder as soon as possible. The tenancy agreement, submitted into evidence, confirmed that the security deposit was \$400.00 and that \$200.00 was paid and a notation on the form indicated that the, "*Balance of \$200.00 due by date stated herein*". February 28, 2011 was shown as the due date and both parties had initialed the term.

The tenant testified that the parties had an understanding that the remainder of the deposit could be paid over a longer period of time not specifically defined and the tenant was contributing payments by installment when she could afford it. However, according to both parties there is an outstanding amount still owed at this time.

The landlord testified that this was the reason that the One Month Notice to End Tenancy for Cause was issued and the landlord requested an order of possession. The landlord stated that in addition to the One Month Notice to End Tenancy for Cause of September 12, a Ten Day Notice to End Tenancy for Unpaid Rent was also recently issued on October 2, 2011 because the tenant did not pay her rent for October 2011.

The tenant acknowledged that she still owed \$80.00 of the required \$400.00 security deposit, but testified that she was under the impression that the One Month Notice to End Tenancy for Cause related solely to the fact that the parties were engaged in a current dispute over the tenant's five cats. The argument was whether or not the landlord was demanding the removal of the cats, or requiring payment of a per damage deposit, or both of the above.

With respect to the Ten Day Notice to End Tenancy for Unpaid Rent issued on October 2, 2011, the tenant argued that the rent had been paid in cash but the landlord had refused to issue a receipt.

### **Analysis**

Section 47(1) of the Act states that a landlord may end a tenancy by giving notice if the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement. It was established that the tenant did not pay all of the deposit and I find that the 30 days lapsed long ago. I do not accept the tenant's allegation that there was a verbal agreement different than what was shown in the written tenancy agreement. I accept that the landlord never gave the tenant permission to pay the security deposit in instalments that have stretched over 8 months into the tenancy so far.

Given the above and based on the testimony and evidence presented, I find that the One-Month Notice issued by the landlord on September 12 2011 was justified and cannot, under the circumstances before me, be cancelled.

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), on the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy.

I make no findings whatsoever with respect to the merit of the Ten Day Notice to End Tenancy for Unpaid Rent issued by the landlord on October 2, 2011 and this matter was not considered during these proceedings.

**Conclusion**

Based on the above, I hereby dismiss the tenant's application without leave to reapply..

I further issue an Order of Possession in favour of the landlord effective October 31, 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: October 19, 2011.

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Residential Tenancy Branch