

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This is an application filed by the Tenant to cancel a 1 month notice to end tenancy for cause and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony.

### Issue(s) to be Decided

Is the Tenant entitled to an order to cancel the notice to end tenancy?

### Background and Evidence

Both parties have confirmed receiving one evidence package from the other participant and both have made detailed reference during the hearing to the evidence.

The Landlord's notice dated September 30, 2011 states the reason given as the Tenant is repeatedly late paying rent. The Landlord states that the rent is due on the 1<sup>st</sup> of each month.

The Tenant's submitted documentary evidence states that he bounced the first rent cheque to the Landlord at the beginning of the tenancy. The Tenant further goes on to state that he was unable to pay rent until the 5<sup>th</sup> or 6<sup>th</sup>. The Tenant further stated that for other dates he recalls at least 50% being on the first with a few being on the second and one occasion on the 3<sup>rd</sup>. The Tenant has confirmed that these dates of the month are in reference to rent being paid.

### Analysis

As both parties have attended the hearing by conference call and have made detailed reference to the evidence submitted by either party, I am satisfied that the Landlord was properly served with the notice of hearing documents and that each party has been properly served with the evidence packages.

Residential Tenancy Branch Policy Guideline #38 states, three late payments are the minimum number sufficient to justify a notice under these provisions. It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments.

I accept that the notice to end tenancy was properly served by the Landlord on the Tenant on September 30, 2011. I find through the Tenant's own direct testimony confirming his documentary submissions that rent has been repeatedly paid late. The Tenant has failed to establish a claim for his application. The Tenant's application to cancel the notice to end tenancy is dismissed.

During the conference call hearing, the Landlord made a verbal request for an order of possession. I find as the 1 month notice to end tenancy for cause dated September 30, 2011 is valid, I grant the Landlord's request. The Landlord is granted an order of possession. 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.

#### Conclusion

The Tenant's application is dismissed.  
The Landlord is granted an order of possession.

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: November 03, 2011.

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Residential Tenancy Branch