

## **DECISION**

Dispute Codes      CNC

This hearing was convened on the tenant's application to have set aside a Notice to End Tenancy for cause, repeated late payment of rent and significant disturbance of other tenants, setting an end of tenancy date of January 1, 2012.

As a preliminary matter, while the Notice to End Tenancy was dated November 28, 2011, there was some uncertainty as to time and method of service. I note that hand written diary of a representative of the strata corporation in which the rental unit is housed stated, "Nov. 30/11 – eviction notice on door.... ."

Notice served by posting on a door is deemed to have been received three days after under section 90 of the *Act*, or December 3, 2011 in the present matter. Section 47(2) of the *Act* requires that one month notice serviced for cause must be served on a day before the rent due date to take effect at the end of the following rent period. Therefore, the end of tenancy date is automatically corrected to January 31, 2012.

### Issues to be Decided

This matter required a decision on whether Notice to End Tenancy for cause should be set aside or upheld on the issue of repeated late payment of rent and/or significant disturbance of other residents.

### Background and Evidence

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served after the tenant had been late paying rent on at least seven occasions between March and October 2011. The landlord supported the claim by copies of her bank statements for the months in question and by the diary of the strata representative who collected the rent on her behalf.

In addition, the landlord submitted a letter dated November 29, 2011 from the strata corporation's property management company reporting 11 complaints about excessive noise from the subject rental unit in the previous eight weeks and 14 complaints in total. The letter made reference to an improvement before that time after complaint to the landlord, but it stated that matters had again deteriorated and that the landlord would face a fine if the issue wasn't resolved.

Disturbances included repeated loud music and use of loud exercise equipment. The landlord stated that the tenant had been issued with several warnings and that she had withdrawn an earlier Notice to End Tenancy on the tenant's broken promise to remedy matters.

### Analysis

Section 26 of the *Act* provides that tenants must pay rent when it is due irrespective of any alleged non-compliance of the landlord with the legislation or rental agreement, for which other remedies are available.

Section 47(1)(b) of the *Act* provides that a landlord may service a one-month notice to end tenancy in circumstances in which tenants have been repeatedly late paying rent. Policy guidelines advise that three late payments within a year would reasonably constitute repeated late payment.

I find with certainty that the tenants' rent was paid late on seven occasions. Therefore, I declined to set aside the Notice to End Tenancy for repeated late payment of rent.

On the number and nature of disturbance of other residents, I find that the Notice to End Tenancy was lawful and valid under section 47(1)(d) of the *Act* as well and uphold the notice on that cause also..

On hearing that determination, the landlord requested and I find she is entitled to an Order of Possession under section 55(1) of the *Act* which compels the issuance of such order on the landlord's oral request when a tenant's application to set aside the notice has failed.

The Order of Possession will take effect at 1 p.m. on January 31, 2011.

Conclusion

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect at 1 p.m. on January 31, 2012.

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: December 28, 2011.

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Residential Tenancy Branch