



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Introduction**

This hearing was convened on applications by both the landlords and the tenant.

By application of September 10, 2012, the landlord sought an Order of Possession pursuant to two 10-day Notices to End Tenancy for unpaid rent served on August 17, 2012 and August 22, 2012 for July and August 2012 rents respectively. The landlords also sought a monetary award for the unpaid rent.

By previous application made on August 22, 2012, the tenant sought to have a third, one month Notice to End Tenancy for repeated late payment of rent served on August 17, 2012 set aside. The tenant also sought a monetary award for loss of quiet enjoyment and loss of sub-tenant revenue.

Both parties sought to recover their filing fee from the other.

This hearing was somewhat complicated by an existing Monetary Order in favour of the tenant issued following a hearing on August 1, 2012 for \$1,150 made up \$500 for loss off quiet enjoyment, \$500 for loss of sub-tenancy revenue, damaged carpets and filing fee.

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

Should any or all of the notices to end tenancy be set aside or upheld and are either of the parties entitled to the monetary awards submitted?

### **Background and Evidence**

This tenancy began on or September 1, 2010 at a rent of \$450 per month and the landlord holds a security deposit of \$225. There is no written rental agreement and the rent is said to have been reduced in exchange for improvements to the rental unit by the tenant over the course of the tenancy, although there was no agreement as to an amount of the rental discount.

During the hearing, counsel for the landlords stated that the notices had been served after the tenant had paid the July 2012 rent late with an NSF cheque and that remained unpaid when the tenant failed to pay the rent due on August 1, 2012.

The tenant stated that the rent had, in fact, been paid by way of a verbal agreement she made with the female landlord on August 4, 2012 that the Monetary Order issued on August 1, 2012 be set off against the overdue rent and part of the September 2012 rent.

The female landlord fervently contested the assertion that she had ever given consent to the set off and I note that the Arbitrator had opted to issue a Monetary Order rather than prescribe set off against rent as was available to her under section 72 of the *Act*. As a matter of note, the landlord had not paid the tenant's award at the time of the hearing.

The landlords and counsel provided further evidence, with the assistance of a translator that the tenant had paid the rent promptly for the first six months of the tenancy but had lapsed into late payments. The tenant stated that she had paid promptly throughout the tenancy until a water intrusion into the rental unit from the landlords' orchard sprinklers in June 2012. I note that section 26 of the *Act* requires that tenants must pay rent when it is due irrespective of any non-compliance by the landlord.

The tenant submitted a copy of her cheque dated June 26, 2012 for rent for that month.

In addition, the parties concurred that the cheque for July, dated July 27, 2012 was returned NSF.

## Analysis

Section 47(1)(b) of the *Act* provides that a landlord may issue a one-month Notice to End Tenancy for cause if a tenant is repeatedly late paying rent. The standard benchmark for establishing repeated late payment is three late payments within the previous 12 months.

I find that the tenant paid the rent late in June and July 2012. Even if the strongly contested consent to set off had been granted by the female landlord on August 4, 2012, the rent due on August 1, 2012 would still have been late.

Therefore, I find that the threshold to establish repeated late payment was made within the three months immediately preceding the hearing.

Consequently, I found that the Notice to End Tenancy for cause was lawful and valid and declined to set it aside. On hearing that determination, counsel for the landlords requested an Order of Possession under section 55(1) of the *Act* which provides that such Order must be issued on the landlords' oral request when a tenant's application to set aside is dismissed and or the Notice to End Tenancy is upheld.

The landlords agreed to extend the end of tenancy date to October 31, 2012 provided that the tenant agreed that the Monetary Order be nullified by the amounts owed by the tenant for July, August and September rents, topped off by a money order given to the landlords by the tenant.

The landlords also granted the extension on the tenant's promise to pay the rent due on October 1, 2012 on time.

Thus, I find that the landlords are entitled to an Order of Possession to take effect on October 31, 2012. The tenant withdrew a claim for loss of revenue with respect to the basement suite, and she did not proceed with the claim for loss of quiet enjoyment on the grounds that the landlord had stopped intruding into her tenancy for the past two weeks.

Having found that the tenancy is ending on the issue of repeated late payment of rent, I find it is not necessary to further evaluate the merits of the notices for unpaid rent.

As this dispute arose from poor adherence to the agreement and legislation by both parties, I find that both should remain responsible for their own filing fees.

### 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 on October 31, 2012, for service on the tenant.

The parties have agreed that the tenant will pay the October 2012 rent on the first day of the month and the Monetary Order held by the tenant is fully satisfied by set off against the July, August and September 2012 rents, a small shortfall of which is balanced by the money order the tenant has provided to the landlords.

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 26, 2012.

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Residential Tenancy Branch