



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, O

### Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking remedy involving a 1 Month Notice to End Tenancy for Cause (the "Notice").

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to documentary evidence timely submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

*Preliminary Issue*-The tenant marked the box on the application seeking "Other" remedy; thereafter a 1 Month Notice to End Tenancy for Cause (the "Notice") was issued and the tenant amended her application. Although the tenant did not specifically make the application to dispute the Notice, I allowed the tenant to amend her application requesting such relief. The hearing proceeded on the subject of the validity of the Notice.

*Preliminary matter*-I note that 44 minutes into the hearing, the tenant exited the conference. The tenant shortly thereafter did make an attempt to dial back into the conference, but exited immediately. Due to this, I concluded that the tenant was experiencing telephone issues.

I monitored the telephone system for the next 5 minutes, during which the tenant did not dial back into the conference. I concluded the telephone conference call hearing at 3:19 p.m.

I further note that by this time, a significant amount of testimony from both parties had been given, more than enough to make a Decision. I therefore concluded that the tenant was not prejudiced by exiting the conference.

### Issue(s) to be Decided

Is the tenant entitled to an order cancelling the landlord's 1 Month Notice to End Tenancy for Cause?

### Background and Evidence

This tenancy started on May 1, 2012 and monthly rent is \$700.00. The tenancy agreement shows that a security deposit of \$350.00 was required to be paid by April 26, 2012.

Pursuant to the Residential Tenancy Branch rules of procedure, the landlord proceeded first in the hearing and testified in support of issuing the tenant a 1 Month Notice to End Tenancy for Cause. The Notice was dated August 21, 2012, was delivered by leaving it with the tenant on that date, listing an effective end of tenancy of September 20, 2012.

Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date is changed to September 30, 2012.

The causes listed on the Notice alleged that the tenant has allowed an unreasonable number of occupants in the rental unit, that the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord, put the landlord's property at significant risk, has engaged in illegal activity that has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord, has assigned or sublet the rental unit without the landlord's consent, and that the tenant has not paid the security deposit within 30 days as required by the tenancy agreement.

The landlord's relevant evidence included the tenancy agreement, the Notice, witness statements and copies of cheques and benefit statements showing the rent payments to the landlord.

*The landlord provided the following testimony:*

In support of his Notice, the landlord testified the tenant has not paid the security deposit of \$350.00, despite repeated requests from the landlord. The landlord further said that he received a cheque of \$350.00 and another one for \$375.00 for the first month's rent for May 2012. Although this amounted to an overpayment of \$25.00, the landlord said that the tenant promised him that she would be getting a job and make payments on the balance of the security deposit over the next few months. This has not occurred, according to the landlord. The landlord further explained that the tenant said the ministry for social assistance would not pay a security deposit.

The landlord said the only other sums he has received from or for the benefit of the tenant were the full monthly rent payments from social assistance, as shown in his evidence. The landlord said that he has not received any payments other than shown by the two cheques and the benefit statements.

*The tenant provided the following testimony:*

The tenant said that the cheque for \$350.00 was for the security deposit, not for rent for May. The tenant explained that the other cheque, for \$375.00, was for a partial rent payment for May and that she paid the remaining balance in cash. The tenant said the landlord did not provide a receipt for the cash payment.

### Analysis

Once the tenant made a timely application to dispute the Notice, the landlord became responsible to prove the Notice to End Tenancy is valid.

In this instance, the burden of proof is on the landlord to prove the tenant has not paid the security deposit within 30 days as required by the tenancy agreement.

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided sufficient evidence to prove this cause listed on the Notice.

In reaching this conclusion, a review of the tenancy agreement shows that the date listed by which the tenant was to have paid her security deposit is April 26, 2012. The evidence presented by the landlord, confirmed by the tenant's evidence, shows that the landlord was paid by the ministry for social assistance the following payments: two payments totaling \$725.00 for May and \$700.00 each for the months of June, July, August and September 2012.

There is no other proof that a payment has been made, which would take account of the payment of the security deposit. The landlord cannot provide proof of a receipt for a payment he did not receive and the tenant did not provide proof that she made such a payment. Without such proof, I cannot conclude that the tenant paid the security deposit as required by the tenancy agreement.

Additionally, I find the landlord did not unreasonably delay in seeking to end the tenancy for this reason as I accept the landlord's testimony that the tenant promised to pay the amount over the next several months, was reminded to do so and failed to do so.

I have not considered the other issues on the Notice as I find that the landlord has to prove only one of the causes listed in order to deem the Notice valid.

Conclusion

I therefore find the landlord submitted sufficient evidence to establish that the tenant has not paid the security deposit within 30 days as required by the tenancy agreement. As I have found that the landlord has proven this cause listed on the Notice, I dismiss the tenant's application to cancel the Notice, without leave to reapply.

As I have dismissed the tenant's application, I grant the landlord's verbal request for an Order of Possession.

The order of possession for the rental unit is effective at 1:00 p.m. on September 30, 2012, the corrected effective date of the Notice.

This final, legally binding order of possession is enclosed with the landlord's Decision. Should the tenant fail to vacate the rental unit pursuant to the terms of the order, this order may be filed in the Supreme Court of British Columbia for enforcement.

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 19, 2012.

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Residential Tenancy Branch