



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Vancouver Eviction Services  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

For the tenant: CNR, DRI

For the landlord: OPR, OPC, MNR, FF

### **Introduction**

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the "Act").

The tenant applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent and to dispute an additional rent increase.

The landlord applied for an order of possession for the rental unit due to alleged cause and for recovery of the filing fee.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, neither party raised any issues regarding service of the applications or the evidence.

I have reviewed all oral and documentary evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

*Preliminary Issue #1-* On his original application for dispute resolution, the tenant did not mark on his application that he was applying to dispute a 1 Month Notice to End Tenancy for Cause. The tenant filed an amended application for dispute resolution seeking cancellation of the 1 Month Notice, although there was a dispute as to whether the landlord received the amended application and whether the tenant filed his application for dispute resolution in time to dispute the 1 Month Notice. When

questioned, the tenant claimed that his application was to dispute both the 10 Day Notice and the 1 Month Notice.

I accept the tenant's submissions and I therefore have allowed the tenant to amend his application for dispute resolution to request cancellation of both Notices issued by the landlord.

*Preliminary issue #2-* I note that 31 minutes into the hearing, the tenant exited the conference.

I monitored the telephone system for the next 7 minutes, during which time the tenant did not dial back into the conference and during which no further substantive testimony was taken from the landlords. I concluded the telephone conference call hearing at 9:38 a.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

1. Is the tenant entitled to an order cancelling the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and 1 Month Notice to End Tenancy for Cause and to an order reversing a rent increase from the landlord?
2. Is the landlord entitled to an order of possession for the rental unit and to recover the filing fee?

#### Background and Evidence

The tenant said the tenancy began 8 years ago and the landlord said that the tenancy began on November 1, 2005; the parties agreed that current monthly rent is \$912 and the tenant paid a security deposit of \$440 on October 15, 2005.

Pursuant to the Residential Tenancy Branch Rules of Procedure (Rules), the landlord proceeded first in the hearing to explain and support the Notices.

The landlord's agent said that the tenant was served with a 1 Month Notice to End Tenancy for Cause on May 16, 2013, via by posting it on the tenant's door, with an effective end of tenancy date of June 30, 2013.

The cause as stated on the Notice alleged that the tenant is repeatedly late paying rent. The landlord, PT, the owner's son, said that at least once a year since the tenancy began the tenant has been issued a notice to end the tenancy due to failure to make timely rent payments. PT stated that as his father is 83 years old, they obtained the services of the first listed landlord as the result of the tenant's 9 consecutive months of late payments of rent within the past year.

The landlord, PT, said that they have been given the run around by the tenant for months about why he is not paying his monthly rent on time and due to this, they are seeking an order of possession for the rental unit.

The landlord's relevant documentary evidence included copies of the Notices, copies of receipts for rent payments, which I note were beyond the 1<sup>st</sup> day of the month when rent was due, showing "for use and occupancy only," and copies of rent cheques and money orders from the tenant, all dated beyond the 1<sup>st</sup> day of the month.

In response, the tenant submitted that the parties had a longstanding agreement that late payments were permissible by the landlord, as long as the late rent payment was paid by a separate money order.

The tenant contended that this agreement was in place due to the tenant's work schedule and locations for employment, as he was not always in town when rent was to be paid.

PT denied such an agreement with the tenant.

### Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

#### *Landlord's application-*

Section 47 of the Residential Tenancy Act provides that a landlord may issue a Notice to End Tenancy for Cause where the tenant is repeatedly late paying rent.

Residential Tenancy Branch Policy Guideline #38 states that three late payments are the minimum number sufficient to justify a notice under these provisions.

I find the landlord established, through oral and documentary evidence, that the tenant has made at least four late payments of rent in the calendar year 2013. The latest late payment resulted in the landlord's 1 Month Notice to End Tenancy being issued to the tenant.

I therefore find the landlord submitted sufficient evidence to establish that the tenant was repeatedly late in paying rent when the 1 Month Notice to End Tenancy for Cause was issued to the tenant.

I therefore find that the landlord is entitled to an order of possession for the rental unit effective July 31, 2013, as per the landlord's request at the hearing, and have enclosed this order with the landlord's Decision.

Should the tenant fail to vacate the rental unit pursuant to the terms of the order of possession after it is served upon him, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenant is advised that costs of such enforcement may be recoverable from the tenant.

I also find merit with the landlord's application and I allow the landlord recovery of the filing fee of \$50.

I therefore grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act in the amount of \$50, which I have enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord this amount without delay, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenant is advised that costs of such enforcement may be recoverable from the tenant.

*Tenant's application*-As I have granted the landlord's application for dispute resolution and granted them an order of possession for the rental unit and a monetary order, I dismiss the tenant's application seeking cancellation of the Notices, without leave to reapply.

As the tenancy is not continuing, I declined to consider the tenant's request to seeking cancellation of the landlord's notice of a rent increase.

Conclusion

The landlord's application has been granted and they have been issued an order of possession for the rental unit and a monetary order for \$50.

The tenant's application is dismissed, without leave to reapply.

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: June 28, 2013

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Residential Tenancy Branch

