



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

### **Dispute Codes:**

OPC, MND, MNSD, FF

### **Introduction**

This hearing dealt with an application submitted by the landlord seeking an Order of Possession based on the One-Month Notice to End Tenancy for Cause dated August 2, 2012, and purporting to be effective August 28, 2013.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

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

Is the landlord entitled to an Order of Possession based on the One-Month Notice to End Tenancy for Cause?

Is the landlord entitled to a monetary order for damages and to keep the tenant's security deposit?

### **Preliminary Matters**

#### **Landlord's Monetary Claim**

In regard to the landlord's monetary claim, I find that the primary issue before me to determine is whether or not this tenancy should be terminated for cause under section 47 of the Act. However, the landlord has also included a monetary claim for damages under section 67 of the Act.

The Residential Tenancy Rules of Procedure, Rule 2.3 states that, in the course of the dispute resolution proceeding, if the arbitrator determines that it is

appropriate to do so, he or she may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

In this instance, I find that the landlord's monetary claim pertained to a separate and distinct section of the Act that was not connected to the One Month Notice to End Tenancy for Cause.

I find that, both the landlord's request for a monetary order to compensate for damage or repairs and the landlord's request to keep the tenant's security deposit in partial satisfaction of the claim, are issues that should be dealt with after the tenancy ends and the move out condition inspection, under section 35 of the Act has been completed.

Accordingly, I find that the monetary portion of this application should be severed and be dealt with through an application under section 67 of the Act. Therefore the landlord's request for a monetary order is dismissed with leave to reapply.

#### Effective Date to Terminate Tenancy

The landlord has issued a One-Month Notice to End Tenancy for Cause under section 47 of the Act. Section 47 of the Act states that a landlord can end the tenancy for one or more of the causes listed under the Act. However, a Notice served under this section must end the tenancy effective on a date that is:

- (a) not earlier than one month after the date the notice is received, and
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

A notice under this section must also comply with section 52 *[form and content of notice to end tenancy]*.

Section 53 of the Act states that, if a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with the Act, then the notice is deemed to be changed to a date that complies with the Act.

Subsection 53 (2) provides that, if the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

In the case of a One-Month Notice to End Tenancy for Cause under section 47, if the effective date stated in the notice is any day **other than the day before the day in the month, that rent is due** under the tenancy agreement, then the

effective date **is deemed to be changed** to be the day before the day rent is due, and that would also comply with the required one-month notice period.

In this instance, although the landlord stated that the tenant's rent is due on the last Wednesday of each month, I find that there is no specific term contained in the written tenancy agreement confirming which day of the month the rent is actually due. Therefore, I find that under the Act, the due date to pay the monthly rent for this tenancy is on, or before, the first day of each applicable rental period.

I find that the landlord's One Month Notice to End Tenancy for Cause was dated on August 2, 2013. The tenant stated that this Notice was never served on the tenant at all. In any case, if I accept that the Notice was posted to the tenant's door on August 2, 2013, as stated by the landlord, then the deemed service date under section 90 of the Act would be in three days for a posted notice.

Accordingly, I find that the One Month Notice to End Tenancy for Cause was served on the tenant on August 5, 2013, if the landlord's testimony is accurate.

In compliance with section 47(2) of the Act, and given the above, I find that a One Month Notice to End Tenancy for Cause served on August 5, 2013, could not be effective, under the Act, until September 30, 2013.

Therefore, I find that, pursuant to section 53(2), I must change the effective date to end the tenancy on the landlord's One Month Notice to End Tenancy for Cause from August 28, 2013, which would not be in compliance with the Act, to an effective date of September 3, 2013.

### **Background and Evidence**

According to the landlord's One-Month Notice to End Tenancy for Cause the tenant has:

- Allowed an unreasonable number of occupants in a rental unit;
- Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
- Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
- Put the landlord's property at significant risk;
- Engaged in illegal activity that
  - (i) has caused or is likely to cause damage to the landlord's property,

(ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

- Caused extraordinary damage to a rental unit or residential property;
- Knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property;

A copy of the One-Month Notice to End Tenancy for Cause dated August 2, 2013 was in evidence and the landlord indicated made reference to photos showing the Notice taped to a door.

This testimony was disputed by the tenant who pointed out that the photo was not a picture of the entry door to their unit and that there is no way to confirm the date that the landlord's photo was taken. The tenant stated that they did not have an opportunity to dispute the Notice, due to it not being served on the tenant until August 19, 2013 as part of the landlord's evidence for this dispute resolution hearing.

However, the tenant indicated that they are willing to move out by the end of September 2013.

### **Analysis**

Under section 47 of the Act, a landlord may terminate the agreement by giving notice to end the tenancy for repeated late payment of rent.

Regardless of whether or not the merit of the One-Month Notice to End Tenancy for Cause was found sufficient to support a termination of the tenancy, the fact is that this tenant had failed to dispute the Notice by making their own application within the statutory 10-day deadline to do so.

If a tenant who has received a notice under section 47 fails to make an application for dispute resolution to dispute the Notice, the Act states that the tenant:

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

The tenant testified that they did not receive a copy of the One-Month Notice to End Tenancy for Cause until August 19, 2013 and were therefore deprived of their right to dispute the Notice.

In any case, during the hearing, the tenant agreed to vacate the rental unit at the end of September 2013. Therefore, I find that the landlord is entitled to an Order of Possession effective September 30, 2013 on consent of the tenant.

I hereby grant the landlord and Order of Possession effective at 1:00 p.m. on Monday September 30, 2013. This order must be served on the tenant and may be enforced through an order of the B.C. Supreme Court if necessary.

I order that the tenant's security deposit be administered in accordance with section 38 of the Act.

I further order that the landlord is not entitled to be reimbursed the cost of the application and I order that the remainder of the landlord's application is dismissed with leave to reapply.

### **Conclusion**

The landlord is partly successful and an Order of Possession is issued on consent, while the remainder of the landlord's application is dismissed with 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: August 28, 2013

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Residential Tenancy Branch