



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding WALL FINANCIAL CORPORATION  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC   FF   CNC   OPT

### **Introduction:**

This hearing dealt with an application by the landlord pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- a) An Order of Possession pursuant to sections 47 and 55; and
- b) An order to recover the filing fee pursuant to Section 72.

This hearing also dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- c) To cancel a notice to end tenancy for cause; and
- d) To recover the filing fee for this application.

### **SERVICE**

Neither tenant attended the hearing, although the male tenant had also made an application for today's hearing which the landlord said they received. The landlord attended the hearing and gave sworn evidence with a witness that the Notice to End Tenancy dated June 27, 2013 was served by posting it on the door and their Application for Dispute Resolution by registered mail. It was verified online as successfully delivered. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing.

### **Preliminary Issue:**

Neither tenant attended and the law student requested an adjournment as she said she had instructions from her supervisor that she did not have authority to represent the tenants in their absence; she believes the male tenant has an acquired brain injury which may have caused him to miss this hearing. The landlord objected to an adjournment as they allege these tenants have a serious bed bug infestation which is jeopardizing the building, they are causing a significant disturbance to other tenants and they also still have dogs without approval contrary to their lease; this behaviour is causing serious problems for other tenants and management.

I find that the Rules of Procedure have options for persons unable to attend a hearing. Rule 6 provides for a request for rescheduling which must be done at least three

business days in advance with details setting out circumstances that are beyond the party's control or in the alternative, obtaining the landlord's consent more than 3 days in advance. If the adjournment is requested after the hearing commences, the arbitrator considers the submissions of the parties and decides on criteria set out in Rule 6.4 to grant it or not. In this case, I refuse to adjourn as I do not consider that an adjournment will contribute to the resolution of the matter, I find it will cause prejudice to the landlord by continuing to escalate the bed bug problem and I find the need for the adjournment arises out of the neglect of the parties. Even if the male tenant had a medical issue, I find the female tenant could have attended and neither one contacted the law school representative to advise her that they would be absent. The adjournment is refused and the hearing continues.

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

Has the landlord proved on the balance of probabilities that there is good cause to end this tenancy or has the tenant demonstrated that the Notice to End Tenancy should be set aside? Is the landlord or tenant entitled to recover filing fees?

**Background and Evidence:**

Only the landlord's agents attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. The tenant's advocate made it clear that she did not have authority to make submissions or give evidence as her client had not attended the hearing. It is undisputed that the tenancy commenced January 2013, that rent is \$1295 a month and a security deposit of \$647.50 was paid on December 12, 2012.

The landlord provided evidence of cause to end the tenancy. They provided evidence of repeated late payment of rent. The male tenant submitted in writing that he and his room mate each paid half the rent and she paid late, although he gave her his portion on time. The landlord pointed out that they are co-tenants on the lease and jointly responsible for paying the rent on time. The landlord also said that the tenants had dogs with no approval contrary to their lease terms, they significantly interfere with the quiet enjoyment of other tenants with their fighting and police have had to be involved and they are putting the landlord's property at significant risk by importing bed bugs in a mattress and not allowing entry for proper treatment. The tenant in his written submission said that the problems arise from the female tenant having a medical emergency and her bringing in a bug infested mattress. He submits that he wants to stay by himself.

The landlord said that the tenant's statements are not accurate as he is a participant in the problems and is the co-tenant. They choose not to request a monetary order today

as they will have to address the money owed and damage issues after the tenants vacate so they ask leave to reapply for a monetary order.

In evidence is the signed Notice to End Tenancy for cause, the lease, a witness statement, a complaint from another tenant and several warning letters about dogs and their arguing. The tenant submitted an unsigned Notice to End Tenancy dated June 27, 2013 which they said was taped to the back of the bed bug notice. The landlord submitted a signed copy which they submitted was served by posting it on the door as witnessed and given in sworn testimony.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

### **Analysis**

The onus is on the applicant to prove on a balance of probabilities their claim. I find the landlord has satisfied the onus of proving on the balance of probabilities that they have good cause to end this tenancy. Furthermore, I find the tenant out of time to apply to set the notice aside. He applied July 24, 2013 and the Notice to End Tenancy being taped on the door on June 27, 2013 was deemed to be served on June 30, 2013 so he was 8 days late.

I find further that the weight of the evidence is that the tenants are repeatedly late in paying rent (although the male tenant blamed it on the female tenant), that they have dogs without approval contrary to their lease terms, that they have a bed bug infestation apparently caused by them as the male tenant said his co-tenant brought in an infested mattress and that they have significantly interfered with the peaceful enjoyment of other tenants by their constant fighting. I find the landlord's evidence well supported by documents and oral testimony of the landlord plus written excuses of the male tenant. For all of these reasons, I find the tenancy is at an end on July 31, 2013 and an Order of Possession is issued to the landlord effective two days from service.

On the tenant's application, the onus is on him to prove on the balance of probabilities that the Notice to End Tenancy was not valid and that there are ulterior motives for ending the tenancy and not the cited causes which were mainly caused by his co-tenant. I find insufficient evidence to support his allegations and he did not attend to support his written submissions. In any case, he and his co-tenant are joint tenants under the lease and therefore jointly liable for paying the rent on time, for not jeopardizing the landlord's property by bringing in bed bugs and for not interfering with the quiet enjoyment of other tenants. The application of the tenant is dismissed without leave to reapply.

**Conclusion:**

I find the landlord entitled to an Order of Possession effective two days from service. This order must be enforced through the Supreme Court of British Columbia. I find the landlord entitled to recover filing fees for this application. I give the landlord leave to reapply for a monetary order after the tenants vacate.

I dismiss the application of the tenant in its entirety without leave to reapply and I find he is not entitled to recover filing fees for his application.

**I HEREBY ORDER that the landlord may recover the filing fees for this application by deducting \$50 from the security deposit of the tenant which will leave a balance of \$597.50 in trust for the tenant.**

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 14, 2013

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Residential Tenancy Branch