



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Bayside Property Services Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, OPC, MNR, MNSD, FF

### Introduction

This hearing dealt with two related applications. One file is the tenant's application for an order setting aside a 1 Month Notice to End Tenancy for Cause. The other is the landlord's application for an order of possession, a monetary order and an order allowing retention of the security deposit in partial satisfaction of the claim. The landlord and the tenant HM appeared and had an opportunity to be heard.

The landlord had named two tenants as the respondents on its' application for dispute resolution. The landlord had attempted to serve that respondent, MD, by registered mail sent to the rental unit. The tenant stated that MD had not lived at the rental unit for a long time and she had informed the landlord of that on more than one occasion. Section 89 of the Residential Tenancy Act allows an application for dispute resolution to be served on a tenant by registered mail sent to the address at which the tenant resides or to the forwarding address provided by the tenant. In light of evidence that the rental unit is neither for MD the claim against him is dismissed with leave to re-apply.

### Issue(s) to be Decided

- Is the 1 Month notice to End Tenancy for Cause dated December 23, 2013 valid?
- If so, is the landlord entitled to an order of possession and on what terms?
- Is the landlord entitled to a monetary order and, if so, in what amount?

### Background and Evidence

This tenancy commenced February 1, 2008. It is now a month-to-month tenancy. Over the years the rent has increased. As of January 1, 2014 the monthly rent was \$1070.00. Effective February 1, 2014, the rent was increased to \$1080.00. The rent is due on the first day of the month. The tenant paid a security deposit of \$500.00 on February 6, 2008. Although a copy of the tenancy agreement was not filed in evidence by either party, both parties stated that it provides for payment of a late payment fee in the amount of \$25.00.

On December 23, 2013, the landlord issued and served a 1 Month Notice to End Tenancy for Cause with an effective date of January 31, 2014. The reason stated on the notice was that the tenant is repeatedly late paying rent.

The tenant's application for dispute resolution was issued on December 30 and served by registered mail actually delivered on January 3, 2014.

The landlord's application for dispute resolution was issued on February 3. It was sent to the tenant by registered mail on that date. According to the records of Canada Post a notice card was left indicating where the item could be picked up. The item was never picked up. The landlord filed a copy of the envelope addressed to the tenant which is clearly addressed to the rental unit. The tracking number is also clearly visible on the document filed. The tenant stated that she has not received any notification from Canada Post about registered mail.

The landlord filed copies of 10 Day Notices to End Tenancy dated December 2, 2013; November 19, 2013; May 8, 2013; September 10, 2012; and October 11, 2011. The landlord also filed copies of breach letters dated May 8, 2013 and October 11, 2011, each stating that the rent had been late in each of the preceding four months and warning that further late payments would result in a 1 Month Notice to End Tenancy for Cause. The tenant denied receipt of either of these letters. The landlord testified that the letters were each attached to the 10 Day Notice to End Tenancy of the same date.

The landlord filed a copy of the Rent Ledger for this tenant. According to the ledger the rent was paid late every month in 2012, and every month in 2013 except July and August.

The tenant testified that she has often paid her rent late over the past seven years and it has never been an issue until this building manager started her employment.

It is acknowledged by both parties that the tenant paid \$650.00 towards the January rent on January 13, 2014, and that the landlord gave the tenant a receipt for this payment marked "use and occupancy only doesn't reinstate tenancy".

The tenant testified that her roommate paid \$400.00 directly to the landlord by money order on January 1 and February 2 towards the January and February rents respectively. She testified that she saw the money orders on the table in the rental unit and believes they were deposited in the rent box. The landlord testified that although

they have received rent payments from the roommate in the past they have no records of any payment from the roommate in January or February.

The tenant acknowledged that she had not made any payment towards the February rent.

#### Analysis

The landlord's application for dispute resolution was served on the tenant by one of the means permitted by section 89(c) of the *Residential Tenancy Act* and pursuant to section 90 is deemed delivered on the fifth day after it was mailed. Accordingly, I find that the landlord's application was properly served on the tenant.

The law related to ending a tenancy because of repeated late payment of rent is set out in *Residential Tenancy Policy Guideline 38: Repeated Late Payment of Rent*. The *Guideline* explains that three late payments are the minimum number sufficient to justify a notice. It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments.

The tenant's payment record is extremely consistent – with only two exceptions it has been late every month for the past two years. Although the landlord has been patient, it is not obliged to be so indefinitely. The landlord has notified the tenant – most recently in May of 2013 – that continued late payment of rent might result in a notice to end tenancy being issued. In spite of that warning the rent was paid late in June, September, October, November, December, January and February. I find that the landlord has established cause within the meaning of section 47 of the Act for ending this tenancy and that the 1 Month Notice to End Tenancy for Cause dated December 23, 2013, is valid. An order of possession effective two days after service is hereby granted to the landlord.

With respect to the landlord's claim for unpaid rent the tenant can only say that she saw money orders that were to be paid to the by landlord. She did not say that she saw her roommate deposit the money orders in the rent box. There is no evidence from the roommate that he actually made those payments or even copies of the money orders themselves. Accordingly, based upon the evidence before me, I find that the landlord has established a total monetary claim of \$1580.00 comprised of unpaid January rent in the amount of \$400.00; unpaid February rent in the amount of \$1080.00; late fees for January and February in the amount of \$50.00; and the \$50.00 fee the landlord paid to file this application. I order that the landlord retain the deposit and interest of \$506.76 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1073.24.

Conclusion

- a. The 1 Month Notice to End Tenancy for Cause dated December 23, 2013, has been found valid and the tenant's application is therefore dismissed.
- b. An order of possession effective two days after service has been granted to the landlord. If necessary, this order may be filed in the Supreme Court of British Columbia and enforced as an order of that court.
- c. A monetary order has been granted to the landlord. If necessary, that order may be filed in the Small Claims Court and enforced as an order of that court.

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: February 24, 2014

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Residential Tenancy Branch

