



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, CNR, MNDC, AAT, AS, FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) of April 8, 2014, pursuant to section 46;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) of April 8, 2014, pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70;
- an order allowing the tenant to assign or sublet because the landlord's permission has been unreasonably withheld pursuant to section 65; and
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord's agent (the agent) testified that a 1 Month Notice was handed to the tenant on March 28, 2014. Although the tenant confirmed that she received that 1 Month Notice, she said that she found that Notice posted on her door. As she included copies of a second 1 Month Notice of April 8, 2014 and 10 Day Notices of April 8, 2014 and May 2, 2014 with her written evidence, I also find that she was served with these additional three notices to end this tenancy. Both parties agreed that the tenant handed the landlord a copy of her dispute resolution hearing package about a month before this hearing. Neither party in attendance had specific details regarding when the tenant handed this package to the landlord. Based on the evidence before me, I find that the parties were served with the above documents and their written evidence in accordance with the *Act*.

At the commencement of this hearing, the agent testified that he had applied for an Order of Possession and a monetary Order for unpaid rent using the Residential Tenancy Branch's (the RTB's) direct request process. He said that he recently learned that this application was dismissed on May 22, 2014. After checking the RTB file # for the direct request decision, I confirmed to both parties that the landlord's application for the above Orders was dismissed with leave to reapply on May 22, 2014. The agent said that the landlord has not submitted any further application for dispute resolution. As such, I advised the parties that I could not consider the agent's oral and written request for the issuance of a monetary Order as this matter was not properly before me. I advised the parties that I could consider the oral request of the agent at this hearing to obtain an Order of Possession on the basis of the 1 Month Notices issued by the landlord in the event that the tenant's applications to cancel those Notices were dismissed.

The tenant testified that she was not intending to sublet this rental unit, so there was no need to consider that portion of her application. As such, the tenant's application to allow her to assign or sublet because the landlord's permission has been unreasonably withheld is withdrawn.

#### Issues(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Is the tenant entitled to recover her filing fee from the landlord? Should any other Orders be issued regarding this tenancy?

#### Background and Evidence

The landlord entered into written evidence a copy of a six-month fixed term Residential Tenancy Agreement (the Agreement) signed on September 23, 2012 by the tenant and the then owner of this rental property for a basement suite. This tenancy continued as a periodic tenancy after the expiration of the initial term on April 1, 2013. Monthly rent is set at \$1,600.00, payable in advance on the first of each month, plus  $\frac{1}{4}$  of the utilities. An \$800.00 security deposit paid by the tenant on October 1, 2012 is still held by the landlord. Ownership of this property changed on or about December 20, 2013, when the current owner took possession of this property.

The landlord's second 1 Month Notice of April 8, 2014 requiring the tenant to end this tenancy by May 12, 2014 cited the following reasons for the issuance of the Notice:

*Tenant is repeatedly late paying rent.*

*Tenant has allowed an unreasonable number of occupants in the unit/site*

*Tenant or a person permitted on the property by the tenant has:*

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;...*

*Tenant has engaged in illegal activity that has, or is likely to:...*

- *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;...*

The landlord's incorrect effective date is automatically corrected to May 31, 2014, the first possible date that a 1 Month Notice issued on April 8, 2014 could have taken effect.

The agent entered into written evidence a statement indicating that the tenant failed to pay her rent by the first of each month for each of the first four months of this year, since the current owner took possession of the rental unit. The agent testified that the tenant has not paid any rent for either May or June 2014.

The tenant did not dispute the agent's claim that she has failed to pay her rent on time on at least three occasions. She also confirmed that she has not paid her May or June 2014 rent, as maintained by the agent. She testified that she would like to move but has no funds to do so. She testified that her application for a monetary award resulted from the landlord's request that she move to make way for one of his relatives to take possession of her rental unit. She said that the landlord did not issue any 2 Month Notice to End Tenancy for Landlord's Use of Property (a 2 Month Notice).

### Analysis

Section 47(1)(b) of the *Act* allows a landlord to end a tenancy if the tenant is repeatedly late paying rent. RTB Policy Guideline #38 provides the following guidance regarding the circumstances whereby a landlord may end a tenancy where the tenant is repeatedly late paying rent.

*Three late payments are the minimum number sufficient to justify a notice under these provisions...*

There is clear evidence that the written tenancy agreement requires the tenant to pay all of the rent by the first of each month. The undisputed evidence presented indicates that the tenant has been late in paying her rent for the first four monthly payments due this

year and has failed to pay any rent for either May or June 2014. I am satisfied that there is a pattern of late payment of rent since the current landlord took over ownership of this rental property in late December 2013.

I dismiss the tenants' application to cancel the landlord's 1 Month Notice of April 8, 2014 on the basis of the tenant's repeated late payment of rent. There is no need to consider the other grounds cited in the landlord's 1 Month Notice or in the 10 Day Notices issued to the tenant.

At the hearing, the landlord requested an Order of Possession if the tenant's application for cancellation of the Notice to End Tenancy were dismissed. As the tenant's application to cancel the 1 Month Notice of April 8, 2014 is dismissed and the corrected effective date has passed, I allow the agent's oral request for the issuance of a two-day Order of Possession to the landlord. I do so pursuant to section 55(1) of the *Act*, which reads as follows:

**55** (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

*(a) the landlord makes an oral request for an order of possession, and*

*(b) the director dismisses the tenant's application or upholds the landlord's notice.*

In considering the tenant's application for a monetary award, I note that the *Act* requires a landlord to issue any notice to end tenancy on the approved RTB forms. As the landlord did not issue a 2 Month Notice to the tenant and this tenancy ends on the basis of the landlord's 1 Month Notice of April 8, 2014 for cause, I dismiss the tenant's application for a monetary award without leave to reapply.

I also dismiss the remainder of the tenant's application without leave to reapply as I find that the tenant has demonstrated no entitlement to any of the other orders requested in her application.

### Conclusion

I dismiss the tenant's application to cancel the 1 Month Notice of April 8, 2014, without leave to reapply. I allow the landlord's oral request for the issuance of an Order of Possession to the landlord effective **two days after service of this Order** on the

tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The tenant's application to be allowed to assign or sublet the rental unit is withdrawn.

The remainder of 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 05, 2014

---

Residential Tenancy Branch

