



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC

### Introduction

This was a hearing with respect to the tenants' application to cancel a one month Notice to End Tenancy for cause. The hearing was conducted by conference call. The named tenant called in and participated in the hearing. The landlord participated in the hearing together with her son and her accountant.

### Issue(s) to be Decided

Should the Notice to End Tenancy dated May 7, 2014 be cancelled?

### Background and Evidence

The rental unit is a residential duplex in Campbell River. The tenancy began in September, 2010. Rent in the amount of \$1,400.00 is payable on the first of each month. The original tenancy agreement included an option to purchase the rental property. The option to purchase has lapsed. The tenancy was for a fixed term that ended on October 31, 2013, but it has continued since then on a month to month basis.

On May 8, 2014 the landlord's agent served the tenant with a one month Notice to End Tenancy for cause dated May 7, 2014. The Notice to End Tenancy purported to require the tenants to move out of the rental unit by June 7, 2014, but, if the Notice to End Tenancy is upheld, the earliest date that it could be effective is June 30, 2014.

The tenants filed their application for dispute resolution on May 8, 2014; they requested an order cancelling the one month Notice to End Tenancy.

The grounds alleged by the Notice to End Tenancy are that the tenants have been repeatedly late paying rent, that they have put the landlord's property at significant risk and have breached a material term of the tenancy agreement.

The landlord provided a written statement and records provided by her accountant concerning the payment of rent by the tenants over the course of the tenancy. The records showed that the tenants have been frequently late and also behind in their rent payments. They were behind one month in their rent since November, 2011 and two months behind since July, 2013. The landlord said that the tenants have put the property at significant risk because the landlord has a personal real estate line of credit which, according to the landlord, requires her to have in place a lease of the rental unit with at least a three year term. The landlord testified that the tenants have refused to sign a new rental agreement having a three year term and their refusal to sign the new agreement has put the property at significant risk and also constitutes the breach of a material term of the tenancy agreement.

On April 2, 2014 the landlord served the tenants with a 10 day Notice to End Tenancy for unpaid rent. The Notice stated that the tenants failed to pay rent in the amount of \$2,800.00 that was due on April 1, 2014. The parties agree that the tenants paid the outstanding rent that was due for March and April within five days of the Notice to End Tenancy and the 10 day Notice to End Tenancy was thereby cancelled.

The tenant acknowledged during the hearing that the rent has not been paid on the first of the month, but has routinely been late. He said that the landlord did not object to the late payments and he suggested that there is an inconsistency between the landlord's insistence that the tenants sign a new three year tenancy agreement, while also saying that she wants the tenancy to end because of the repeated late payments.

The landlord said that she was prepared at one point to continue the tenancy provided that the tenants signed a fixed term agreement because she thought that continuing the tenancy might assist her in convincing the tenants to honour their obligations under a promissory note given to the landlord. The landlord said that she is no longer willing to continue the tenancy. She requested an order for possession effective at the earliest date possible.

### Analysis

The Residential Tenancy Policy Guideline with respect to repeated late payment of rent provides that:

The *Residential Tenancy Act*<sup>1</sup> and the *Manufactured Home Park Tenancy Act*<sup>2</sup> both provide that 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.

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. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be “repeatedly” late

A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.

In exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.

Whether the landlord was inconvenienced or suffered damage as the result of any of the late payments is not a relevant factor in the operation of this provision.

There is no basis for the landlord’s assertion that the tenants have somehow put the landlord’s property at risk or that they have breached a material term of the tenancy agreement by refusing to sign a new fixed term agreement. When the term of the original agreement expired the tenancy reverted to a month to month tenancy. There is nothing in the original agreement that obliges the tenants to sign a new fixed term and the tenants’ refusal to sign a new agreement does not constitute a valid ground for ending the tenancy.

With respect to the repeated late payment of rent, however, I find that the late payments do constitute a valid ground for ending the tenancy and the mere fact that the landlord did not object earlier does not prevent her from now relying on the late payments as a ground for ending the tenancy. The landlord may have acquiesced in accepting late payments, but she demanded repayment of arrears and served a 10 day Notice to End Tenancy or a late payment in April. Because there have been three recent late payments, I find that there are sufficient grounds to uphold the Notice to End Tenancy and I therefore dismiss the tenants’ application to cancel the Notice to End Tenancy without leave to reapply.

### Conclusion

At the hearing the landlord requested that I issue an order for possession.

Section 55 of the *Residential Tenancy Act* provides 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.

I have dismissed the tenants' application to dispute the landlord's Notice to End Tenancy. The landlord made an oral request for an order of possession at the hearing. The earliest day that the Notice to End Tenancy can be effective is June 30, 2014. Pursuant to section 55 I grant the landlord an order for possession effective June 30, 2014 after service upon the tenants. This order may be registered in the Supreme 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: June 12, 2014

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Residential Tenancy Branch

