



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding NORTH PEACE COMMUNITY HOUSING SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute codes**

CNC

### **Introduction**

This hearing was convened in response to an application filed on December 11, 2014 by the tenant to cancel a 1 Month Notice to End Tenancy for Cause (the Notice to End) dated December 04, 2014. The Notice to End was given for solely the reasons as:

- *Tenant is repeatedly late paying rent*

Both the tenant and the landlord appeared in the conference call and each participated in the hearing via their submissions and their testimony. At the outset of the hearing the parties were afforded opportunity to resolve their dispute and the landlord verbally requested that their Notice to End be upheld via an Order of Possession, however the landlord stated that they would accept an Order effective later than the effective date of the 1 Month Notice to End - specifically March 31, 2014.

The tenant acknowledged receiving the landlord's evidence consisting of 69 pages. The landlord acknowledged receiving the tenant's evidence consisting of 2 pages.

For this type of application, the onus is on the landlord to prove the Notice to End was issued for sufficient reason, and the hearing advance on the merits of the landlord's onus.

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

Is there *sufficient* cause to end the tenancy?

Is the landlord entitled to an Order of Possession?

### **Background and evidence**

This tenancy began August 01, 2008. The tenancy agreement states that the monthly rent is payable in advance on the first day of each month. The landlord provided relevant evidence as follows for the 12 month period prior to issuing the 1 Month Notice to End.

- On February 05, 2014 the landlord served the tenant with a 10 Day Notice to End for Unpaid Rent claiming the tenant owed February rent on the 1<sup>st</sup>. of that month.
- On March 06, 2014 the landlord served the tenant with a 10 Day Notice to End for Unpaid Rent claiming the tenant owed March rent on the 1<sup>st</sup>. of that month.
- On April 03, 2014 the landlord served the tenant with a 10 Day Notice to End for Unpaid Rent claiming the tenant owed April rent on the 1<sup>st</sup>. of that month.
- On May 06, 2014 the landlord served the tenant with a 10 Day Notice to End for Unpaid Rent claiming the tenant owed May rent on the 1<sup>st</sup>. of that month.
- On August 07, 2014 the landlord served the tenant with a 10 Day Notice to End for Unpaid Rent claiming the tenant owed August rent on the 1<sup>st</sup>. of that month.
- On October 06, 2014 the landlord served the tenant with a 10 Day Notice to End for Unpaid Rent claiming the tenant owed October rent on the 1<sup>st</sup>. of that month.

On the same date the 10 Day Notice was accompanied by a letter from the landlord stating that should the rent be late again in the following 6 months the tenant would receive a 1 Month Notice to End Tenancy for Cause.

- On December 04, 2014 the landlord served the tenant with a 10 Day Notice to End for Unpaid Rent claiming the tenant owed December rent on the 1<sup>st</sup>. of that month.

The tenant provided evidence from their financial institution (bank) stating that the policy of the bank held the tenant's funds for 4 days after their 'bank machine' or ATM deposit on December 01, 2014, and as a result the tenant's funds were not available to the landlord. The landlord argued that the tenant was duly warned in October 2014 and

that the tenant should have taken guidance from the letter and ensured that their rent was not, again, late. The landlord further argued that the consequence of the bank's policy was not an unforeseeable occurrence.

### **Analysis**

I accept the testimony of the tenant and the landlord and I have reflected carefully on all relevant matters presented.

Residential Tenancy Policy Guideline **38: Repeatedly Late Payment of Rent**, in relevant part states as follows: **emphasis mine**

*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.*

On the preponderance of the evidence and testimony provided, I accept the landlord's testimony and evidence and find the landlord has met their burden of proof and presenting they had *sufficient* cause to end this tenancy on the basis: *Tenant is repeatedly late paying rent*. Therefore, I uphold the landlord's Notice to End as valid; and effectively, the tenant's application to cancel the landlord's Notice to End is **dismissed** without leave to reapply. The landlord is hereby entitled to an Order of Possession.

**Section 55** of the Act, in part, states as follows:

#### **Order of possession for the landlord**

**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.

(3) The director may grant an order of possession before or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order.

In this matter the landlord requested an Order of Possession effective no earlier than March 31, 2015. As this does not prejudice the tenant the landlord's Order will reflect the landlord's request.

### **Conclusion**

The tenant's application is **dismissed**. I **Order** the tenancy will end on the effective date of the Notice to End. I grant an **Order of Possession** to the landlord effective **March 31, 2015**. This Order must be served on the tenant. Should the tenant then fail to comply with the Order, the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

**This Decision is final and binding on both parties.**

*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: January 19, 2015

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Residential Tenancy Branch

