



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Courtenay Low Income Housing Society  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy. Both parties participated in the conference call hearing. At the hearing, the landlord's agent requested that the corporate landlord, in whose name the notice to end tenancy was issued, be added as a defendant. I found it reasonable to amend the application to include the corporate landlord as a defendant. The style of cause in this decision reflects that change.

### Issue to be Decided

Should the notice to end tenancy be set aside?  
Did the tenant file her application within the required time frame?

### Background and Evidence

The parties agreed that the tenancy began on May 1, 2014 and that the tenant was obligated to pay her rent in advance on the first day of each month. The parties further agreed that the tenant did not pay her rent on the first day of the months of July, August, September, December and January. They further agreed that on January 9 the tenant was served with a 1 month notice to end tenancy for cause (the "Notice") which alleged that the tenant was repeatedly late paying rent. The tenant applied to dispute the Notice on January 20.

The tenant testified that in one of the months in which her rent was paid late, the first day of the month fell on a holiday and she believed the landlord did not collect rent on holidays. She further testified that she would have paid her rent on time if she had known that it was an issue for the landlord, but because the landlord didn't say anything to her about her rent being late, she thought it was not a problem.

The landlord provided evidence that each month in which rent was paid late, they issued the tenant a 10 day notice to end tenancy for unpaid rent.

The tenant's father, who assisted her in the hearing, claimed that the landlord had undertaken a campaign of harassment against the tenant. I refused to hear testimony on this issue as it was not relevant to the application before me.

### Analysis

Section 47(4) of the Act provides that a tenant must apply to dispute a notice of this type within 10 days or, pursuant to section 47(5), she is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. The tenant filed her application to dispute the Notice 11 days after receipt and did not apply for an extension of time in which to dispute the Notice. I was willing to amend the tenant's application to include a claim for more time, but the tenant offered no explanation as to why she was unable to dispute the Notice within the requisite timeframe. For that reason, I dismiss the tenant's claim to dispute the Notice as it was not filed on time. I note that even if I had granted the tenant an extension of time, she still would have been unsuccessful in her application for the following reasons.

The tenant acknowledged having signed a tenancy agreement that stipulated that rent was due on the first day of each month and further acknowledged that she paid rent late on 5 occasions in 9 months. The tenancy agreement very clearly states that rent is due on the first day of each month including holidays and weekends. I do not accept that the tenant should be excused for a late payment when the first day of the month fell on a holiday.

The tenant indicated that the landlord may have acquiesced to her breach of the requirement to pay rent on the first day of the month because according to the tenant, the landlord did not tell her it was an issue to pay rent late. I do not accept that the landlord acquiesced to the breach. On every occasion in which the tenant paid rent late, the landlord served a 10 day notice to end tenancy on the following day. The fact that the landlord was prepared to proceed with an eviction after each late payment should have put the tenant on notice that she was expected to comply with the tenancy agreement.

The landlord bears the burden of proving that she has grounds to end the tenancy. As the tenant acknowledged having paid rent late 5 times over 9 months, I find that the landlord has established grounds to end this tenancy.

I therefore dismiss the tenant's claim for an order setting aside the Notice. During the hearing the landlord made a request under section 55 of the legislation for an order of possession. Under the provisions of section 55, upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. The tenant must be served with the order of possession. Should the tenant 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.

### Conclusion

The tenant's claim is dismissed and the landlord is granted an order of possession.

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 18, 2015

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Residential Tenancy Branch

