



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MOUNTAIN COUNTRY PROPERTY MANAGEMENT LTD,  
WHISTLER HOUSING AUTHORITY  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute codes**

Tenant: CNC, OLC  
Landlord: MND, MNDC, MNSD, OPC

### **Introduction**

This hearing was convened in response to cross applications by the parties. The tenant filed their application February 20, 2015 to cancel a 1 Month Notice to End Tenancy for Cause (the Notice to End) dated February 06, 2015 with an effective date of March 31, 2015.

The landlord filed a late application seeking a monetary order for loss, for which, on March 17, 2015, they received their Notice of Hearing, to then be served on the tenant. The landlord stated it was their intent that the landlord's monetary claims could be heard at the same time as the tenant's application.

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 orally / verbally requested that their Notice to End be upheld and they be given an Order of Possession. The landlord ultimately stated that they would accept an Order of Possession effective later than the effective date of the 1 Month Notice to End.

### *Preliminary matters*

The tenant testified they had received the landlord's evidence, and rebuttal evidence to

their own application, by registered mail – which they were deemed by Section 90 of the Act to have received March 17, 2015; and, subsequently received the landlord's application. The tenant confirmed they received 36 pages and 7 photographs from the landlord – inclusive of evidence in rebuttal to their application, and also in support of the landlord's late application. The tenant testified they have evidence in rebuttal to the landlord's late application for monetary claims which they could have produced. I found that the landlord did not file their application until 12 days before this hearing and did not serve the tenant with notice of their application, or their evidence in time for the tenant to respond to the landlord's monetary claims. As a result, the landlord's application was dismissed – *with leave to reapply*. It must be noted that the parties agreed the tenant already has the landlord's evidence upon which the landlord intends to rely in any re-application. None the less, the landlord was advised, on an abundance of caution, that on re-application, they should again serve the tenant and the Hearing with all relevant or new evidence in support of their claims.

The hearing advanced solely on the merits respecting the tenant's application to cancel the landlord's Notice to End for cause, and the landlord's evidence in support of their onus to prove they gave the tenant a valid Notice to End the tenancy for sufficient cause.

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

Is there *sufficient* cause to end the tenancy?

Should the landlord's Notice to End be cancelled?

### **Background and evidence**

The undisputed evidence is as follows. This tenancy began May 01, 2012. On February 10, 2015 the tenant received a 1 Month Notice to End Tenancy for Cause dated February 06, 2015. The Notice to End was given for the reasons:

- *Tenant is repeatedly late paying rent*
- *Put the landlord's property at significant risk*
- *Tenant has caused extraordinary damage to the unit or property*

- *Tenant has not done required repairs of damage to the unit*

The parties were apprised that despite the reasons stipulated the landlord's Notice to End is not invalidated if the landlord cannot prove every reason for issuing the Notice, but that the landlord must prove that at least one of the reasons is valid so as to establish cause for ending the tenancy.

The tenancy agreement states the monthly rent is payable in advance on the first day of each month. The landlord provided relevant document evidence as follows for the 12 month period prior to issuing the 1 Month Notice to End, and both parties agreed to this evidence as follows:

#### **10 Day Notice to End Tenancy for Unpaid Rent**

- On January 06, 2015 the landlord served the tenant with a 10 Day Notice to End for Unpaid Rent claiming the tenant owed January rent on the 1<sup>st</sup>. of that month.
- On December 05, 2015 the landlord served the tenant with a 10 Day Notice to End for Unpaid Rent claiming the tenant owed November 2014.
- On April 24, 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.

#### **Late payments of Rent**

- On January 08, 2015 the tenant paid January 2015 rent due on the 1<sup>st</sup> of that month.
- On November 24, 2014 the tenant paid November 2014 rent due on the 1<sup>st</sup> of that month.
- On October 16, 2014 the tenant paid October 2014 rent due on the 1<sup>st</sup> of that month.
- On July 14, 2014 the tenant paid July 2014 rent due on the 1<sup>st</sup> of that month.
- On April 28, 2014 the tenant paid April 2014 rent due on the 1<sup>st</sup> of that month.

The tenant argued that in respect to one of the late payment of rent dates the landlord had used all the tenant's post-dated cheques for rent and the next payment of rent went unsatisfied by the tenant as a result - therefore it should not be considered late rent.

The landlord argued they are not responsible to pursue the tenant for the rent - that

the timely payment of rent is not an unforeseeable occurrence and the tenant should have ensured their rent was paid when due.

### **Analysis**

I accept the testimony and evidence of the tenant and the landlord and reflected 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 I accept the landlord's evidence and find the landlord has met their burden of proving they had sufficient cause to end this tenancy on the basis: *Tenant is repeatedly late paying rent*. As a result, I find it is not necessary for me to determine the validity of the remaining reasons for issuing the 1 Month Notice to End. 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 relevant 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 tenant requested and the landlord agreed an Order of Possession be effective April 30, 2015. The parties were apprised that the tenant is not precluded from vacating earlier, and that in the absence of any mutual agreement of the parties all rent owed must be paid when due.

### **Conclusion**

The tenant's application is **dismissed**. I **Order** the tenancy will end no later than **April 30, 2015**. I grant an **Order of Possession** to the landlord effective **April 30, 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: March 25, 2015

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Residential Tenancy Branch

