



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, CNR, ERP, PSF

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenants to: cancel a notice to end tenancy for cause and unpaid rent; for the Landlord to make emergency repairs for health and safety reasons; and, for the Landlord to provide services or facilities required by law.

One of the Tenants and Landlord appeared for the hearing and provided affirmed testimony. The hearing process was explained and the participants had no questions on the proceedings. Both parties were provided the opportunity to present their evidence, cross-examine the other party on the evidence provided, and make submissions to me.

### Preliminary Issues

The Landlord confirmed receipt of the Tenant’s written evidence which included a copy of the notice to end tenancy. The Landlord provided written evidence to the Residential Tenancy Branch prior to the hearing but confirmed that she had not given a copy of this to the Tenant as she did not know she had to.

Rule 3.15 of the Residential Tenancy Branch Rules of Procedure require that a Respondent must serve any evidence they intend to rely upon at the hearing to the Applicant prior to the hearing. In addition, the Notice of Hearing document that was served to the Landlord containing the conference call codes for this hearing also stipulates the requirement to serve evidence to the other party prior to the hearing. For this reason, I did not consider the written evidence of the Landlord. However, I allowed the Landlord to provide the evidence in oral testimony.

The Tenants had applied to cancel a notice to end tenancy for unpaid rent. However, neither party had provided a copy of this notice. When the Tenant was asked about this

she explained that they had not been served with a notice to end tenancy for unpaid rent but their Application was to cancel the notice to end tenancy for cause which related to unpaid rent. The Landlord confirmed that the Tenants had not been served with a notice to end tenancy for unpaid rent. Therefore, as the Tenants were not seeking to cancel a notice to end tenancy for unpaid rent, I removed this claim from their Application pursuant to my authority under Section 64(3) (c) of the *Residential Tenancy Act* (the “Act”).

#### Issues(s) to be Decided

- Should the one month notice to end tenancy for repeatedly late rent payments be cancelled?
- Is the Landlord required to make emergency repairs to the rental suite and provide essential services required by law?

#### Background and Evidence

The parties confirmed that this tenancy started in May 2013 with the previous Landlord and the Tenants. The Tenant confirmed that an oral month to month tenancy had been established between her and the previous Landlord in the amount of \$700.00 payable per month. The Tenant confirmed that her rent at the start of the tenancy was payable on the first of each month but the previous Landlord had verbally allowed her to pay her rent whenever she was in possession of money which would be at various times of the month.

The Landlord confirmed that a tenancy agreement was in place with the Tenant and previous Landlord but that this had not been signed by the Tenants. The Landlord testified that she took over the tenancy on December 1, 2014 and her understanding was that rent was payable on the first day of each month.

The Landlord testified that the Tenants paid their rent late for the months of December 2014, January, February and March, 2015. The Landlord also testified that the Tenants had not paid any rent for April, 2015 to date.

The Tenant confirmed that she had made late rent payments as testified to by the Landlord. The Tenant explained that she used her rent money to pay for repairs the Landlord was failing to complete and for unreasonable utility costs; however, she did eventually pay full rent for the months that it was late.

The Landlord testified that she had served the Tenant a 1 Month Notice to End Tenancy for Cause (the "Notice") on February 24, 2015 by posting it to the rental unit door. The reason for ending the tenancy is because the Tenant is repeatedly late paying rent and because the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord. The Notice shows an end of tenancy date of March 24, 2015. The Tenant confirmed that she had received the Notice on her door on February 24, 2015 but submitted that the Notice was invalid because it contained an incorrect vacancy date which should be March 31, 2015.

The Landlord explained that she was looking to deal with the issues on the Notice regarding the alleged disturbances carried out by the Tenant which was the main reason why the Tenant had been given Notice. The Landlord made an oral request for an Order of Possession during the hearing. However, the Tenant explained that she had packed her belongings and was going to be moving out of the rental suite following the date of the hearing as she did not have money to pay the rent.

### Analysis

In examining the Notice, I find that the contents complied with Section 52 of the Act. I also accept that the Notice was served to the Tenant by posting it to the Tenant's door in accordance with Section 88(e) of the Act. Accordingly, I find that Tenants disputed the Notice within the 10 day time limit afforded to them under Section 47(4) of the Act.

An incorrect vacancy date on a notice to end tenancy does not invalidate the Notice. Rather, Section 47(2) of the Act requires that a Notice under this section is effective on a date that must consist of one complete rental month. Therefore, as the Notice was served to the Tenant on February 24, 2015, the effective date of vacancy on the Notice is corrected to March 31, 2015 pursuant to Section 53 of the Act.

Section 26 of the Act requires a Tenant to pay rent on the day that it is due. The Act defines a "tenancy agreement" as an agreement, whether written or **oral**, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia. Common law has established that oral contracts and/or agreements are enforceable. Therefore, based on the foregoing, I find that the Tenant and the previous Landlord engaged into a verbal tenancy agreement which is recognized and enforceable under the Act. Based

on the Tenant's testimony, I find that rent under the agreement was established as payable on the first day of each month in this month to month tenancy.

Policy Guideline 38 to the Act states, in part:

*"The Residential Tenancy Act and the Manufactured Home Park Tenancy Act 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."*

[Reproduced as written]

In this case, I find that based on the Tenant's confirmation that they had paid rent late for the previous five months of this tenancy, the Notice cannot be cancelled on this basis and the Landlord is entitled to end the tenancy. Therefore, I find the tenancy ended on March 31, 2015 in accordance with the Notice and the Tenant is now over holding the tenancy and has not paid for April 2015 rent.

As the tenancy has now ended, I did not examine the parties' evidence relating to the second reason on the Notice as this is now a moot issue. The Landlord was willing to give the Tenant some time to move out of the rental suite but the Tenant explained that she would be moving out straight away and did not have any issue with the Landlord being issued with a two day Order of Possession as per the Landlord's verbal request.

Accordingly, pursuant to Section 55(1) of the Act, the Landlord is granted an Order of Possession effective two days after service on the Tenant. If the Tenant fails to vacate the rental suite, the Landlord must serve the Tenant with a copy of the order which may then be enforced through the Supreme Court of British Columbia as an order of that court.

As the tenancy has now ended and the Tenant has already made preparations to leave the rental suite, the Tenant's claim for emergency repairs and services is now a moot issue that does not require determination.

## Conclusion

The Tenants have been repeatedly late paying rent. Therefore, the Tenant's Application to cancel the Notice and for emergency repairs and essential services is dismissed without leave to re-apply. The Landlord is granted with an Order of Possession to enforce the ending of the tenancy.

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: April 08, 2015

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Residential Tenancy Branch

