



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Tinker Realty Inc.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

For the tenant: CNC

For the landlord: OPC, MNSD, MNDC, FF

### **Introduction**

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act ("Act").

The tenant applied for an order cancelling the landlord's 1 Month Notice to End Tenancy for Cause ("Notice").

The landlord applied for an order of possession for the rental unit pursuant to the Notice, for authority to keep all or part of the tenant's security deposit, a monetary order for money owed or compensation for damage or loss, and for recovery of the filing fee paid for this application.

The tenant, her advocate, and the landlord's agent, (hereafter "landlord"), attended the hearing, the hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the participants gave affirmed testimony, were provided the opportunity to present their evidence orally, refer to relevant documentary evidence submitted prior to the hearing, question the other party, and make submissions to me.

At the outset of the hearing, there were no issues raised regarding the service of the other's application or their evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

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

Is the tenant entitled to an order cancelling the landlord's Notice?

Is the landlord entitled to an order of possession for the rental unit based upon their Notice, to retain the tenant's security deposit, further monetary compensation, and to recovery of the filing fee paid for this application?

### Background and Evidence

The landlord's undisputed evidence shows that this tenancy began in June 2012, monthly rent is \$778, due on the first day of the month, and the tenant paid a security deposit at the start of the tenancy.

Besides requesting an order of possession for the rental unit, the landlord made a monetary claim of \$750.00, for the rent for June 2015.

During the hearing, the landlord explained that when she filed her application on May 14, 2015, she was not sure the tenant would be paying her rent for June; however, the landlord confirmed that the tenant did in fact pay rent for June and that she no longer was pursuing her monetary claim.

#### *Landlord's evidence-*

Pursuant to the Rules, the landlord proceeded first in the hearing to explain and support the Notice.

The landlord submitted that the tenant was served the Notice on April 29, 2015, by hand delivering the document to the tenant.

The Notice explains that the tenant had 10 days to dispute the Notice. It also explains that if the tenant did not file an application to dispute the Notice within 10 days, then the tenant was conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit by the effective date of the Notice. The effective move out date listed on the Notice was May 31, 2015. The landlord submitted a copy of the Notice.

The tenant filed an application to dispute the Notice on May 6, 2015, within the required 10 days.

The cause as stated on the Notice alleged that the tenant is repeatedly late in paying rent.

In support of their Notice, the landlord testified that the tenant has paid rent late in October, November and December 2014, and in April 2015. Into evidence the landlord supplied a receipt dated November 6, 2014, showing a payment for November and the balance for October 2014, a receipt dated December 30, showing a payment for the balance of November and part of the December 2014 rent, a receipt dated January 5, 2015, showing payment for the balance of December 2014 rent, a receipt dated January 6, 2015, showing payment for rent for January 2015, and two receipts showing separate payments for rent April 2015, the latest partial payment being received on April 24, 2015.

*Tenant's response-*

As a response, the tenant's advocate questioned the landlord about her receipt evidence, and the landlord confirmed that none of the receipts showed the acceptance of rent was on a use and occupation basis.

Taking this evidence into account, the tenant's advocate argued that by the landlord's actions, they have effectively waived the Notice and reinstated the tenancy as the landlord gave the tenant the impression that if she caught up on her payments, the matter would be resolved.

The tenant's advocate argued further that the tenant paid her rent on time in June with a reasonable expectation that the landlord would not pursue the matter of the end of the tenancy through the Notice.

*Landlord's rebuttal-*

The landlord submitted that she has been in repeated conversation with the tenant to express the serious nature of her continue late payments. The landlord submitted that she told the tenant that the late payments were not a joke and that she made it quite clear to the tenant that the late payments were not acceptable.

The landlord agreed that if I made a finding to uphold the Notice, an order of possession for the rental unit for the effective date of July 31, 2015, would be acceptable.

Analysis

*Landlord's application-*

Section 47(1)(b) of the Act authorizes landlords seek an end of a tenancy by issuing a notice if a tenant is repeatedly late in paying rent. The landlord bears the burden of proving the cause listed on his Notice.

Residential Tenancy Branch Policy Guideline #38 states that three late payments of rent are the minimum number sufficient to justify a notice under these provisions.

I find the landlord established, through oral and documentary evidence, that the tenant has made at least five late payments of rent in the 7 months prior to issuing the Notice, and that the latest late payment resulted in the landlord's Notice being issued to the tenant.

I therefore find the landlord submitted sufficient evidence to establish that the tenant was repeatedly late in paying rent when the Notice was issued to the tenant.

As to the tenant's advocate's submissions on the issue of waiver, section 11 of the Residential Tenancy Guidelines provides that a notice by either party to end the

tenancy can only be waived by the express or implied consent of both parties. This question usually arises when a landlord has accepted rent after the effective date of the Notice, or in this case, May 31, 2015. There is no question of waiver when a landlord accepts rent up to the effective date of the Notice as the landlord is entitled to such rent. If a landlord accepts the payments of rent for the period after the effective date of the Notice, then the intention of the parties will be an issue. According to the guidelines, intent can be established by evidence when:

- The receipt shows the money was received for use and occupancy only
- The landlord specifically informed the tenant that the money would be for use and occupation only
- The conduct of the parties indicates intention.

In the case before me, the only payment of rent due after the effective date of the Notice was the rent for June, which was made by the tenant.

In considering the evidence before me, I find that the landlord's conduct did not indicate their intention to waive the Notice. The tenant filed her application in dispute of the Notice on May 6, 2015, and was set for hearing on June 19, 2015. The landlord filed their application seeking an order of possession for the rental unit on May 14, 2015, and was set for hearing on June 19, 2015, as a cross application to the tenant's.

There was no evidence submitted to support that the landlord gave any indication to the tenant that the Notice would be waived, as the landlord pursued an order of possession for the rental unit after the tenant applied to cancel the Notice and there was no evidence of communication by the landlord with the tenant to suggest that the hearing would be cancelled.

I also relied upon the landlord's application, which showed they were applying for June's rent, in the event it was not paid.

As I have found that the landlord submitted sufficient evidence to support their Notice and that they have not waived the Notice, I therefore find that the landlord is entitled to an order of possession for the rental unit effective July 31, 2015, as per the landlord's agreement at the hearing, and have enclosed this order with the landlord's Decision.

Should the tenant fail to vacate the rental unit pursuant to the terms of the order of possession after it is served upon her, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenant is advised that costs of such enforcement may be recoverable from the tenant.

As to the landlord's request for recovery of their filing fee paid for the application, I decline this request as I find their application was not necessary. As the tenant had made an application to cancel the Notice, the landlord may attend the hearing on the tenant's application and request an order of possession for the rental unit, pursuant to section 55(1) of the Act in the circumstances of their Notice being upheld.

*Tenant's application-*

As I have granted the landlord's application and granted them an order of possession for the rental unit and a monetary order, I dismiss the tenant's application seeking cancellation of the Notice, without leave to reapply.

Conclusion

The landlord has been granted an order of possession for the rental unit.

The tenant's application is dismissed.

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 20, 2015

---

Residential Tenancy Branch

