



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CRESCENT HOUSING SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC

### Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for Cause.

The tenant and landlord's agents (the landlord) attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for Cause?

### Background and Evidence

The parties agreed that this month to month tenancy stated on March 17, 2014. The tenant pays a subsidized rent for this unit of \$394.00 per month plus \$10.00 for parking.

The landlord testified that the tenant has been repeatedly late paying rent. In 2014 the tenant was late in September, October, November and December. In 2015 the tenant has also been late and her most recent late payments were in July when rent was paid on July 03; in August when rent was paid on August 05; and in September when rent was paid on September 04. The landlord testified that the tenant has been sent warning letters about late payments of rent and two 10 Day Notices have also been served upon the tenant in August and September, 2015. Furthermore, the tenant was also sent information from the Residential Tenancy Policy Guidelines #38 which explained to the tenant that three late payments are the minimum number sufficient to justify a Notice under these provisions.

The landlord testified that a One Month Notice to End Tenancy for cause was served upon the tenant by posting it to the tenant's door on September 02, 2015. The Notice provides a reason to end the tenancy because the tenant is repeatedly late paying rent. The Notice has an effective date of October 31, 2015.

The landlord testified that the tenant did pay October's and November's rent on time and was given a receipt showing that these payments were for use and occupancy only and did not reinstate the tenancy. The landlord testified that the tenant has not filed an application to dispute the Notice and the landlord therefore seeks an Order of Possession effective on November 30, 2015.

The tenant testified that she was never given notice in 2014 that her rent was late. The tenant agreed that she may have paid her rent on either the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> or 5<sup>th</sup> of a month. The tenant testified that in 2015 July 01 fell on a statutory holiday and the office was not open. If the landlord did not collect it until July 03, then it is not the tenant's fault as it was put in the drop box. The tenant testified that August 01 fell on a weekend and the office was not open so rent was put into the drop box. If the landlord did not collect it until August 05, as August 03, was a statutory holiday then this is not the tenant's fault. The tenant agreed that September's rent cheque was paid late.

The landlord testified that if rent day falls on a statutory holiday or a weekend and any tenant drops their rent cheque in the drop box then these are collected the next working day. All other tenant's rent cheques were collected but there was not a rent cheque from this tenant. If rent cheques are in the drop box on the next working day then they are date stamped for the first of the month, if they have not been put in the drop box then they are date stamped on the day they are received which in this tenant's case was July 03, August 05 and September 04, 2015.

The tenant testified that she did get an application form on line from the Residential Tenancy Branch but the form stated about trying to make arrangements with the landlord to avoid a hearing. The tenant attempted to do this but was sent a letter saying the landlord did not want to work things out. The tenant agreed she did not fill in her application to apply to cancel the One Month Notice.

### Analysis

When a tenant is served with a One Month Notice to End Tenancy the tenant is provided with information on page two of that Notice about how the tenant can dispute the Notice by filing an application for Dispute Resolution. The landlord has provided a copy of this Notice served upon the tenants on September 02, 2015. The tenant has not disputed the One Month Notice within the 10 allowable days as indicated on page two of the Notice.

Consequently, as the tenant did not file an application to dispute the Notice the tenant is presumed to have accepted the end of the tenancy pursuant to s. 47 (5) of the *Act*. The Notice indicates an effective date of October 31, 2015; however, the landlord indicated at the hearing that they are willing to allow the tenant to vacate on November 30, 2015. The landlord is therefore entitled to an Order of Possession pursuant to s. 55 of the *Act*.

Furthermore, I find there is sufficient evidence to support the reason given on the Notice to End t Tenancy that the tenant has been repeatedly late paying rent. Therefore, in

accordance with the Residential Tenancy Policy Guidelines #38; three late payments are the minimum number sufficient to justify a notice under these provisions.

Conclusion

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **on November 30, 2015**. This Order must be served on the Respondent. If the Respondent fails 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 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: November 13, 2015

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Residential Tenancy Branch

