



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            CNC, FF

### Introduction

The Application for Dispute Resolution filed by the tenant seeks an order to cancel a one month Notice to End Tenancy dated September 21, 2015 and an order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the one month Notice to End Tenancy was served on the Tenant by posting on September 21, 2015. Further I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord by mailing, by registered mail to where the landlord resides on September 25, 2015. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenants are entitled to an order cancelling the Notice to End Tenancy dated September 21, 2015?
- b. Whether the tenants are entitled to recover the cost of the filing fee?

### Background and Evidence

The tenancy began on July 13, 2011. The present rent is \$1350 per month payable in advance on the first day of each month. The landlord presently holds a security deposit of \$325.

### Grounds for Termination:

The Notice to End Tenancy relies on the following grounds:

- The tenant is repeatedly late paying the rent.
- The tenant or person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord does not live on the rental property. Witness #1 is the President of the Strata Council. He testified as to receiving complaints from other occupants of excessive noise coming from the tenants' rental unit. However, that evidence was not given to the tenants ahead of the hearing. The tenants testified they have no knowledge of what the complaints are. One of the fundamental principles of our legal system is that respondents must be given sufficient notice of the claims being made against them. I determined the landlord failed to give proper notice of these complaints. As a result I ordered that the grounds that the tenants have significantly interfered with or unreasonably disturbed another occupant be severed from this hearing. I have not dealt with this issue on its merits. The landlord retains the right to serve a new Notice alleging the same grounds.

The landlord testified that in December 2014 the tenants asked for rent relief and he agreed that the payment of \$1025 in outstanding rent could be delayed to March 31, 2015 at which time the tenants were asked to present a plan. The e-mail sent by the landlord asked the tenants to acknowledge that the rent is due on the first of each month. The tenants responded stating "We acknowledge that the rent payment for January 1 is due January 1, 2015 and monthly thereafter. The tenants have failed to present a plan and the \$1025 in rent for December 2014 remains outstanding.

The landlord testified as to the following late payments of rent prior to the issuance of the one month Notice to End Tenancy:

- Rent for September paid September 12, 2015
- Rent for August paid August 7, 2015
- Rent for July paid July 14, 2015
- Rent for June paid June 8, 2015
- Rent for May paid May 8, 2015.

The tenants provided a summary which indicates over 20 late payments dating back to April 6, 2012. The summary identifies statements from the landlord when he agreed to delay in cashing the cheque such as "No problem" "ok will due" "Yes I will hold to" etc. However, the tenants testified that these statements indicate the landlord agreed to the late payments and he was waived his rights to make a claim to end the tenancy as a result.

The landlord disputes this. He indicated that he agreed not to cash the cheque when due to avoid NSF charges for both parties.

Policy Guideline #38 provides as follows:

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.

In exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.

Whether the landlord was inconvenienced or suffered damage as the result of any of the late payments is not a relevant factor in the operation of this provision.

### Analysis

I do not accept the submission of the tenants that the landlord has waived his rights to give the tenants a Notice to End Tenancy. The tenancy agreement provides that the rent is due on the first day of the month. The agreement of the landlord is an agreement not to cash the cheque until the agreed date. It does not mean the landlord is agreeing to waive his rights to end the tenancy where the tenants are repeatedly late paying the rent..

Further, the landlord agreed to give the tenants temporary rent relief of the rent for December (\$1025) with the proviso the tenants come up with a plan of repayment by March 31, 2015. The tenant failed to do this. In my view, this alone is sufficient grounds to end the tenancy as it means there is outstanding rent for the months after March 31, 2015. .

The landlord's e-mail of December 10, 2015 where he agreed to grant the tenant rent relief of \$1025 until the end of March makes it clear he is expecting the rent for January and thereafter is to be paid on the first of each month. The tenants agreed to this. The tenants' summary indicates the rent for February was paid on February 6, 2015, the rent for March was paid on March 6, 2015 and the rent for April was paid on April 3, 2015. The landlord also gave the tenants an e-mail dated July 4, 2015 expressing disappointment for being asked to hold the cashing of the rent cheques. The rent for July, August and September were paid late.

I determined the landlord has sufficient cause to end the tenancy on the basis of repeated late payment of rent

Determination and Orders:

As a result I dismissed the tenant's application to cancel the Notice to End Tenancy. I order that the tenancy shall end. The landlord stated that if he was successful at this hearing he would be content for the Order for Possession to be set for the end of December. I further order that the application of the tenants for the cost of the filing fee be dismissed.

Order for Possession:

The Residential Tenancy Act provides that where a landlord has made an oral request for an Order for Possession at a hearing where an arbitrator has dismissed a tenant's application to set aside a Notice to End Tenancy, the arbitrator must grant an Order for Possession. The landlord made this request at the hearing. As a result I granted the landlord an Order for Possession effective December 31, 2015.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

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 25, 2015

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Residential Tenancy Branch

