



## Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Climar Development  
and [tenant name suppressed to protect privacy]

### **DECISION**

#### Dispute Codes:

CNC, FF

#### Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on December 21, 2015 she served the Application for Dispute Resolution and the Notice of Hearing to the Landlord, although she cannot recall whether she attached it to the door or placed it in the Landlord's mail box. The Agent for the Landlord stated that the Application for Dispute Resolution and Notice of Hearing were placed through the Landlord's mail slot. I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*.

On December 21, 2015 the Tenant submitted two pages of evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was not served to the Landlord. As the evidence was not served to the Landlord it cannot be accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

#### Preliminary Matter

On January 21, 2016 the Landlord submitted thirteen pages of evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was sent to the Tenant, via registered mail, on January 25, 2016. The Agent for the Landlord was unable to cite a Canada Post tracking number that corroborates this testimony.

The Tenant stated that she has not received the aforementioned evidence and she has not received notice from Canada Post regarding this package.

Section 90 of the *Act* stipulates that a document that is served by mail is deemed received on the fifth day after it is mailed. The earliest the Tenant would be deemed to have received the Landlord's evidence package that was mailed on January 25, 2016 would, therefore, be January 30, 2016.

Rule 3.15 of the Residential Tenancy Branch Rules of Procedure stipulates a respondent's evidence must be received by the applicant not less than 7 days before the hearing. Even if I determined that the Tenant received the evidence of January 30, 2016 (which I have not), I would conclude that it was not served in accordance with the timelines established by rule 3.15.

As the Tenant does not acknowledge receiving the Landlord's evidence package and it was not served in accordance with rule 3.15 of the Residential Tenancy Branch Rules of Procedure, it was not considered as evidence for these proceedings.

### Issue(s) to be Decided

Should the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?

### Background and Evidence

The Landlord and the Tenant agree that:

- the tenancy began on July 01, 2015;
- the rent of \$1,095.00 is due by the first day of each month;
- a One Month Notice to End Tenancy for Cause, which was signed by the Agent for the Landlord, was posted on the door of the rental unit on, or about, December 11, 2015;
- the One Month Notice to End Tenancy declared that the Tenant must vacate the rental unit by January 31, 2016;
- the One Month Notice to End Tenancy declared that the Landlord intends to end the tenancy because the rent was repeatedly paid late and there was a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice was given;
- rent for September of 2015 was not paid until September 03, 2015 or September 04, 2015;
- rent for December of 2015 was not paid until at December 07, 2015; and
- rent has been paid for February of 2016.

The Tenant stated that a rent cheque for October of 2015 was placed through the Landlord's mail slot on October 02, 2015. The Agent for the Landlord stated that she believes the rent cheque for October was received on October 03, 2015 or October 04, 2015.

The Tenant stated that her rent was not paid on time because her former boyfriend was paying the rent on her behalf. She stated that she is no longer with her boyfriend and she anticipates the rent will now be paid on time.

### Analysis

Section 47(1)(b) of the *Act* authorizes a landlord to end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent. On the basis of the undisputed testimony I find that a valid One Month Notice to End Tenancy for Cause was posted on the door of the rental unit on, or about, December 11, 2015, which declared the Landlord's intent to end the tenancy because the rent was repeatedly late.

Residential Tenancy Branch Policy Guideline #38, with which concur, suggests that three late payments are the minimum number sufficient to justify a notice under these provisions and that

typically it does not matter if the late payments were consecutive or whether one or more rent payments have been made on time between the late payments, unless the late payments are far apart.

On the basis of the undisputed testimony I find that the rent was not paid when it was due in September, October, and December of 2015. Given that the rent was paid late on three occasions during the first six months of the tenancy, I find that the Landlord has established grounds to end the tenancy pursuant to section 47(1)(b) of the *Act*.

As the Landlord served proper notice to end the tenancy pursuant to section 47 of the *Act* and the Landlord has established grounds to end the tenancy pursuant to section 47(1)(b) of the *Act*, I dismiss the Tenant's application to set aside this One Month Notice to End Tenancy.

In adjudicating this matter I have placed no weight on the Tenant's submission that the rent was late because it was being paid by her former boyfriend. The Tenant's obligation to pay rent when it is due is not negated by personal/ financial circumstances.

As the Tenant's application to set aside the One Month Notice to End Tenancy has been dismissed, I grant the Landlord an Order of Possession pursuant to section 55(1) of the *Act*. As the Tenant has paid rent for February of 2016, the Order of Possession will be effective February 29, 2016.

As the Tenant has failed to establish the merits of the Application for Dispute Resolution, I dismiss her application to recover the fee for filing this Application.

### Conclusion

I grant the Landlord an Order of Possession that is effective at 1:00 p.m. on February 29, 2016. This Order may be served on the Tenant, filed with 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: February 04, 2016

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Residential Tenancy Branch