



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FF, O

### Introduction

This matter dealt with an application by the Tenant to obtain an order to cancel a 1 Month Notice to End Tenancy for Cause, to recover the filing fee and for other considerations.

Service of the hearing documents by the Tenant to the Landlord was done by registered mail on approximately August 5, 2016 in accordance with section 89 of the Act. The Landlord confirmed receiving the Tenant's application and hearing package on August 8, 2016.

### Issues to be Decided

Tenant:

1. Is the Tenant entitled to an order to cancel the 1 Month Notice to End Tenancy for Cause?

### Preliminary matter

The Tenant questioned if the Residential Tenancy Act had jurisdiction in this situation. The Tenant said they had a family verbal agreement that this was a rent to own situation and the property is a farm. The Tenant said there was no documentation for the rent to own agreement but the Tenant sent in documents to show the property has been approved for restricted farm tax status for 2017.

The Landlord said this was a verbal tenancy agreement.

As there is no evidence to support the rent to own agreement and farm does not have farm status until 2017 nor is the farm a commercial business; I find that the Residential Tenancy Act does have jurisdiction in this situation.

### Background and Evidence

This tenancy started in March 1, 2015 as a verbal month to month tenancy. Rent is \$1,600.00 per month payable on the 1<sup>st</sup> day of the month. The Tenant said no security deposit was required. No move in condition inspection report was completed at the start of the tenancy.

The Landlord said she issued a 1 Month Notice to End Tenancy for Cause on July 20, 2016. The reasons on the Notice to end Tenancy are: repeatedly late with rent payments, the Tenant has significantly interfered or unreasonable disturbed an occupant or the Landlord, the Tenant has seriously jeopardized the safety or right of the Landlord or other occupant, the Tenant has put the landlord's property at risk, the Tenant has caused extraordinary damage to the property and the Tenant has sublet the rental unit without the Landlord's written consent. The Landlord continued to say that she served the 1 Month Notice to End Tenancy for Cause dated July 20, 2016 in person to the Tenant and his brother on July 20, 2016.

The Landlord said the first reason for issuing the Notice to End Tenancy is repeatedly late rent payments. The Landlord said the Tenants have unpaid rent of \$1,600.00 for each month of October, 2015, November, 2015, March 2016, August, 2016 and September, 2016. As well the Landlord said the Tenants paid the rent late on many occasions but she does not have a record of the payment dates. The Landlord said she submitted a letter from the Tenant's wife A.J. that states that all the reasons on the Landlord's 1 Month Notice to End Tenancy for Cause are valid and true. Further the Landlord said she spoke with the Tenant's wife A.J. on a number of occasions about the rent being late or unpaid.

The Tenant responded by saying that he had nothing to do with the rent payments. The Tenant continued to say his wife A.J. handled all the rent payments. Further the Tenant said there is a no contact Court Order between the Tenant and his wife A.J. therefore the Tenant was unable to get any evidence to show if and when rent payments were made. The Tenant said given the situation between him and his wife A.J. he believes the Landlord and his wife A.J. are colluding to have the Tenant evicted. The Tenant said the Landlord is lying and the letter from his wife A.J. is dishonest. The Tenant said in conclusion he has no idea if the rent was paid or not as the Landlord has not provided him with any information of the rent payments.

The Tenant continued to say that the other reasons on the 1 Month Notice to End Tenancy for Cause are also dishonest and incorrect. First the Tenant said he has not caused any damage to the rental unit or property in fact he has invested approximately \$10,000.00 in farm structures and about \$25,000.00 of his labour to repair and build the property up. Further the Tenant said any claims the Landlord is making about him jeopardizing occupants or the Landlord's safety and health is wrong. The Tenant said he is a registered gun owner and the guns in the rental unit are stored in a safe. The Tenant said he did not utter threats against the Landlord or occupants of the rental unit.

The Landlord said she submitted a copy of the Police Report, a letter from the Crown Counsel and a letter from the Bail Supervisor providing information about the no contact order. The Landlord said these documents show the threats by the Tenant are real.

The Tenant said the court date has not happened yet so he is not guilty of anything at this time.

The Tenant said the Landlord's claim that he sublet the rental unit to his brother is incorrect as well. The Tenant called his brother D.J. as a witness. The Witness D.J. gave affirmed testimony that he did not pay rent and he was a guest at the rental property while he was relocating from eastern Canada.

The Landlord said she had no questions for the Witness but she found out he was living at the unit on July 20, 2016.

The Tenant and the Witness both testified the Landlord knew well before July 20, 2016 that the Witness was going to live at the property.

The Tenant and Witness gave testimony that they believed the Landlord has acted dishonestly and has not complied with the Residential Tenancy Act. The Tenant's application package contained his application, the 1 Month Notice to End Tenancy for Cause, a copy of the BC assessment letter and application for farm status for tax purposes and the receipt for the filing fee. The Tenant said the farm status application shows the Landlord agreed to a long term rental agreement.

The Tenant said in closing that the Landlord and his wife A.J. are being dishonest for the purpose of evicting him from the property. The Tenant said he has invested a great deal in the property and he believes this is a rent to own situation not a tenancy. Further the Tenant said he has no control of the rent payment information because of the situation with his wife A.J. so it is not fair to use that reason to evict him.

The Landlord said in closing that the Tenants were repeatedly late with many rent payments, they have unpaid rent for 5 months and most of the Tenant's testimony is not relevant to the Notice to End Tenancy for Cause.

### Analysis

It appears this situation involves more disputes than just a tenancy dispute, but this application and the Residential Tenancy Act only deals with tenancy issues so this decision is only focused on the application and the tenancy. The Parties may wish to seek legal counsel for any other matters.

As mentioned in the preliminary matters section, I accept jurisdiction as the Tenant has not provide any evidence to establish grounds that this situation is a rent to own or a commercial farming operation. Consequently the parties will abide by this decision.

Section 26 (1) of the Act says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Policy guideline 38 says three late payments are the minimum number sufficient to justify a notice under these provisions.

I accept the Landlord affirmed testimony and the letter of A.J. stating that the reasons on the 1 Month Notice to End Tenancy for Cause dated July 20, 2016 are valid and true. As well the Tenant testified that his wife A.J. (the letter's author) was in charge of paying the rent and he has no knowledge if the rent was paid or not. As a result I find the Tenant has not established grounds to refute A.J.'s letter as evidence. Consequently I find that the Tenant not provide any evidence to dispute the Landlord's claim that the rent was repeatedly late. Further I accept the Landlord's evidence that the Tenants were late with the rent at least 5 times over the last year and I accept 5 months of rent are not paid. Therefore I find the Tenant has not established grounds to cancel the 1 Month Notice to End Tenancy for Cause dated July 20, 2016 because of repeatedly late rent payments. Consequently as the Tenant has not been successful on this reason I find it is not necessary to review the other reasons on the 1 Month Notice to End Tenancy for Cause as the Landlord only has to prove one reason. I dismiss the Tenant's application without leave to reapply.

As the Tenant was unsuccessful in this matter I order the Tenant to bear the \$100.00 filing fee which has already been paid.

Further as the Tenant was unsuccessful in canceling the Notice to End Tenancy, I find pursuant to s. 55 (2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect two days after the Order is served on the Tenant.

Conclusion

The Tenant's application is dismissed without leave to reapply

An Order of Possession effective at two days after service has been issued to the Landlord. A copy of the Order must be served on the Tenant: the Order of Possession may be enforced in the Supreme Court of British Columbia. .

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: September 20, 2016

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Residential Tenancy Branch