



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNR, CNC, OLC

### **Introduction:**

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the one month Notice to End Tenancy dated May 27, 2019 and setting the end of tenancy for June 30, 2019
- b. An order to cancel a 10 day Notice to End Tenancy dated June 7 2019
- c. An order that the landlord comply with the Act, Regulations and/or tenancy agreement.

The tenant(s) failed to appear at the scheduled start of the hearing which was 9:30 a.m. on July 30, 2019. A representative of the landlord was present and ready to proceed. I left the teleconference hearing connection open and did not start the hearing until 10 minutes after the schedule start time in order to enable the tenant to call in. The tenant(s) failed to appear. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I then proceeded with the hearing. The representative of the landlord was given a full opportunity to present affirmed testimony, to make submissions and to call witnesses.

On the basis of the solemnly affirmed evidence presented at the hearing a decision has been reached. All of the evidence was carefully considered.

I find that the one month Notice to End Tenancy was served on the Tenant by posting on May 27, 2019. I find that the 10 day Notice to End Tenancy was served on the Tenant by posting on June 7, 2019. I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord. With respect to each of the applicant's claims I find as follows:

### **Issues to be Decided:**

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the one month Notice to End Tenancy dated May 27, 2019?
- b. Whether the tenant is entitled to an order cancelling the 10 day Notice to End Tenancy dated June 7, 2019

- c. Whether the tenant is entitled to an order that the landlord comply with the Residential Tenancy Act, Regulations and/or tenancy agreement?

Background and Evidence:

The tenancy began on February 1, 2018. The tenancy agreement provided that the tenant(s) would pay rent of \$825 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$340 on August 1, 2018. The rent was reduced to \$262 commencing April 1, 2019 as the tenant's boyfriend was removed from the tenancy agreement.

The landlord testified the tenant failed to pay the rent for June 2019 when due. The landlord served a 10 day Notice to End Tenancy on the Tenant on June 7, 2019 which stated the sum of \$354 is outstanding. The tenant paid the arrears with a payment on July 2, 2019. The landlord accepted the payment for "use and occupation only." The landlord served another 10 day Notice to End Tenancy for the rent for July. The arrears of rent for July were paid on July 23, 2019 and the landlord again accepted this payment for "use and occupation only. "

The landlord referred to considerable evidence in the form of statements showing the tenant and her boyfriend and father of her children have been involved in many altercations that has significantly and unreasonably disturbed other occupants in the rental unit. The police have been called.

The tenant provided a couple of statements. The statements deny much of the violence but state that her boyfriend is often asked to babysit her four children (he is the father of these children) as she works nightshift. The landlord testified the Ministry has removed the children on July 26, 2019.

Application of the Tenant to Cancel the two Notices to End Tenancy:

Rule 7.3 of the Rules of Procedure provides as follows:

**7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The Applicant failed to appear. A representative of the Respondent was present. **I ordered the Tenant's application be dismissed without liberty to reapply.**

Application to Cancel the 10 day Notice to End Tenancy dated June 7, 2019

I determined that it was appropriate to consider the Tenant's application on the merits.

The tenant failed to pay the rent for June when due. The landlord served a 10 day Notice to End Tenancy on the tenant by posting on June 7, 2019. It is deemed received 3 days later. The Act provides that if the Tenant pays the arrears within 5 days the 10 day Notice to End Tenancy is void. The tenant failed to pay the arrears within the 5 day period. The law further provides that if the tenant pays the arrears after the 5 day period the landlord has an election to make. The landlord can accept the payment and reinstate the tenancy. Alternatively, the landlord can accept the payment for "use and occupation" in which case the tenant must vacate at the end of the rental payment period. In this case the landlord accepted the tenant's payment of the arrears on July 2, 2019 for "use and occupation only." As a result I determined the landlord has grounds to end the tenancy on the basis of non-payment of rent.

Application to Cancel the one month Notice to End Tenancy dated May 27, 2019:

The grounds for termination set out in the one month Notice to End Tenancy provide as follows:

- Tenant or a person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord
  - seriously jeopardized the health or safety or lawful right of another occupant or the landlord
  - put the landlord's property at significant risk
- Tenant has engaged in illegal activity that has, or is likely to:
  - damage the landlord's property
  - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
- Tenant has caused extraordinary damage to the unit/site or property/park

I determined the landlord has sufficient grounds to end the tenancy based on the one month Notice to End Tenancy. I am satisfied the tenant has permitted her boyfriend to come onto the property. I am further satisfied that the conduct of the Tenant and her boyfriend has significantly interfered with or unreasonably disturbed other occupants on the rental property including the landlord.

Determination and Orders:

After carefully considering all of the evidence I determined that the landlord has established sufficient cause to end the tenancy based on the 10 day Notice to End Tenancy and the one month Notice to End Tenancy. As a result I dismissed the tenant's application to cancel the two Notices o End Tenancy without leave to re-apply. I order that the tenancy shall end. I dismissed the tenant's application for an order the landlord comply with the Act, Regulations and/or tenancy agreement.

Order for Possession:

The Residential Tenancy Act provides that where an arbitrator has dismissed a tenant's application to cancel a Notice to End Tenancy, the arbitrator must grant an Order for Possession. The landlord used the approved government form As a result I granted the landlord an Order for Possession. The landlord stated she was content to have the effective date being 7 days after service. **I granted an Order of Possession effective 7 days after service on the Tenant.**

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 final and binding on the parties.**

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: July 30, 2019

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Residential Tenancy Branch