



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

CNC; ERP; RP; RR; FF

### **Introduction**

This Hearing was scheduled to hear the Tenant's application to cancel a Notice to End Tenancy for Cause; for Orders that the Landlord make regular and emergency repairs to the rental unit; for a rent reduction; and to recover the cost of the filing fee from the Landlord.

Both parties signed into the telephone conference and provided affirmed testimony.

It was determined that the Tenant hand delivered the Notice of Hearing documents to the Landlord's office on June 12, 2014, and that she hand delivered her documentary evidence to the Landlord's office on July 10, 2014.

### **Preliminary Matter**

For disputes to be combined on an application they must be related. I find that not all the claims on the Tenant's application are sufficiently related to the main issue to be dealt with together. Therefore, I will deal with the Tenant's request to set aside, or cancel the Landlord's Notice to End Tenancy for Cause, and I dismiss the balance of the Tenant's claim with leave to re-apply.

### **Issue to be Determined**

- Should the Notice to End Tenancy for Cause issued May 28, 2014 (the Notice), be cancelled?

### **Background and Evidence**

The Landlord gave the following affirmed testimony:

- The Landlord testified that he placed the Notice in the Tenant's mail box on May 29, 2014.
- Rent is due on the first day of each month

- The tenancy began on July 1, 2013. The Landlord stated that the Tenant has been late paying rent for the following months:

<u>Rent due</u>	<u>Rent paid</u>
August 1, 2013	August 14, 2013
September 1, 2013	September 5, 2013
October 1, 2013	October 31, 2013
November 1, 2013	November 18, 2013
December 1, 2013	December 13, 2013
January 1, 2014	January 8, 2014
February 1, 2014	March 7, 2014
March 1, 2014	March 27, 2014
April 1, 2014	April 14, 2014
May 1, 2014	May 24, 2014

The Landlord asked for an Order of Possession dated August 31, 2014, in order to allow the Tenant more time to find alternate accommodation.

The Tenant gave the following affirmed testimony:

- The Tenant agreed that she had been late “a few times” and then stated that she had been late paying rent “at least 3 times”.
- The Tenant stated that the Landlord was late picking up the rent. The Tenant stated that rent was paid in cash or by internet transfer.
- The Tenant testified that there was a shortage of work in the winter time and that her paydays didn’t line up with the date that rent was due.
- The Tenant stated that she wanted the Landlord to answer to her requests for repairs and therefore she withheld rent.

### **Analysis**

Section 26 of the Act provides that rent must be paid when it is due whether or not the Landlord complies with the Act, regulation or tenancy agreement. If the Tenant felt that the Landlord was not making required repairs to the rental unit, her remedy would have been to file an application seeking repair orders or compensation. However, the Tenant did not have a right under the Act to withhold rent.

The Notice indicates that the Landlord seeks to end the tenancy because the Tenant is repeatedly late paying rent. The Residential Tenancy Branch Policy Guidelines provide that three late payments are sufficient in order to consider rent is “repeatedly late”. The Tenant agreed that she had been late at least three times.

Therefore, I dismiss the Tenant’s application to cancel the Notice. I find that it is a valid notice to end the tenancy and that the tenancy ended on June 30, 2014.

The Tenant has not been successful in cancelling the Notice and therefore her application for recovery of the cost of the filing fee is dismissed.

Section 55(1) of the Act states:

**Order of possession for the landlord**

**55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

Further to the provisions of Section 55(1) of the Act, I hereby provide the Landlord with an Order of Possession. I find that the Landlord is entitled to an order of possession effective **two days** after service on the Tenant. However, the Landlord seeks an Order of Possession effective August 31, 2014, and therefore I hereby provide the Landlord with the Order effective that date.

**Conclusion**

The Tenant's application to cancel the Notice is **dismissed without leave to re-apply**.

I hereby provide the Landlord with an Order of Possession effective **1:00 p.m., August 31, 2014**. This Order must be served on the Tenant and 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: August 02, 2014

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Residential Tenancy Branch

