

## **DECISION**

### **Dispute Codes**

ET, FF  
CNC, CNR, MNDC, OLC, ERP, RP, LRE, RPP, LAT, RR, FF

### **Introduction**

This hearing was convened upon the applications of both the landlord and the tenant.

The landlord's application filed March 26, 2010 seeks:

1. End Tenancy Early and obtain an Order of Possession; and
2. Recovery of the filing fee.

The tenant's application filed March 29, 2010 seeks:

1. To cancel a notice to End Tenancy Given for Cause;
2. To cancel a Notice to End Tenancy Given for Unpaid Rent;
3. A monetary order for compensation for damage or loss in the sum of \$3,300.00;
4. An Order compelling the landlord to comply with the Act, regulation or tenancy agreement;
5. An Order that the landlord to make emergency repairs for health or safety reasons;
6. An Order that the landlord to make repairs to the unit;
7. An Order that the landlord return the tenant's personal property;
8. An Order suspending or setting conditions on the landlord's right to enter the rental unit;
9. An order authorizing the tenant to change the locks to the rental unit;
10. An order allowing the tenant to reduce rent for repairs, services or facilities; and
11. Recovery of the filing fee.

### **Service**

All parties appeared at the hearing. Agent for the tenant testified that he and the tenant attended this hearing believing the tenant's own application was being heard. Agent for the tenant testified that the tenant had not been served with a Notice to End the Tenancy Early or the Application for Dispute Resolution seeking to end the tenancy early.

With respect to the issue of service of a Notice seeking to end a tenancy early I refer to Section 56(3) of the Residential Tenancy Act which states:

If an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end the tenancy.

With respect to service, the landlord's agent PS testified that he served the Application for Dispute Resolution hearing package by posting it to the rental unit door on March 29, 2010. The landlord produced a witness CW who testified that she was with the PS when he posted the Application to the rental unit door.

The tenant says he has not been served with evidence to support an early end of tenancy.

Based on the evidence of the landlord's witness I am satisfied that the tenant was duly served with the Application for Dispute Resolution hearing package.

### **Background and Evidence**

The rental property is currently held in the Estate of BMS. PS is the son of BMS and the beneficiary of the estate. While MD is the Executor of the Estate PS is acting as landlord for the estate. PS is also a tenant of the rental unit. The landlord, PS, resides in the self contained basement suite while the tenant resides in another self contained suite on the main floor. The landlord submits that the tenant moved into the rental property in October 2009 and it was their agreement that tenant would be responsible for paying hydro and propane charges and the tenant was to open hydro and propane accounts in his own name. The landlord did not submit a written tenancy agreement to this effect. The landlord says the propane tank ran out the first week of March 2010 but the tenant did not have it refilled. The landlord testified that the tenant had full control of the power to the rental unit as the breaker panel is in the tenant's suite. The landlord submits that the tenant frequently flips breakers thereby shutting off electrical, phone and internet to PS's suite.

Witness for the landlord CW was sworn in. CW testified that on March 15, 2010 the landlord approached her to ask her if she would come to his suite to observe that he had no power or phone. CW testified that she did as asked and she observed that PS had no power or phone. CW testified that she understood that this was because the tenant had shut the breakers off.

CW testified that in mid-March the landlord asked her to attend with him again as a witness. The landlord advised her that he wished to deliver another letter to the tenant to notify him of a planned inspection. CW testified that she attended as requested and observed the landlord knock on the door and the tenant answered. The landlord handed the tenant a letter and the tenant took the letter and slammed the door. CW says the door nearly slammed on the landlord's fingers. CW testified that she and the landlord then turned to go back down the stairs when the tenant came out of the door and pushed the landlord. CW testified that the landlord nearly fell down the stairs. CW testified that the RCMP attended and she provided them with her statement to this effect.

CW testified that she attended as a witness again on March 28, 2008 at which time the landlord wished to deliver another letter. CW testified that she and the landlord observed that the tenant was home as they could see him in the window but he would not answer the door. CW testified that they attended again to serve the Application for Dispute Resolution hearing package on March 29, 2010 but again the tenant would not answer the door and PS therefore posted the package to the rental unit door.

The tenant did not have questions for CW but stated that the only reason he pushed the landlord down the stairs was because the landlord had pushed him first. The tenant agreed that the RCMP attended. The tenant says the RCMP attended at his request and spoke to all involved. The tenant says he was provided with a police file number but he did not have it to present at this hearing.

CW responded that she never saw the landlord push the tenant and she only saw the tenant push the landlord.

The landlord testified that the tenant has the electrical panel for the entire house in his suite and he frequently shut the power and phone off leaving PS without power or phone for days at a time. Further that the tenant did not have the propane tank refilled so there was no heat. The landlord submits that in mid-March he became aware that the tenant had installed a propane tank in the residence attaching it to the hot water tank. The landlord submits he left a phone message asking the tenant to remove the tank immediately because it was a hazard.

The landlord testified that it was because of concerns over this tank that he attempted to do an inspection but the tenant would not allow access to the rental unit.

The landlord submits that on March 26, 2010 the issue was reported to the BC Safety Authority. The landlord submits that a Provincial Gas Inspector from the BC Safety Authority attended that same day and issued an Order for removal of the tank. A copy of that order was submitted in evidence. The Inspector also recommended that the matter be reported to the Metchosin Fire Department and the Fire Chief responded that day. The landlord and the fire chief entered the suite at 1430 hours after determining the tenant was not at home. The propane tank was photographed and removed.

In a report dated March 26, 2010 and filed in evidence by the landlord the Metchosin Fire Chief SD states in part:

At approximately 14:30 on this date I made entry into the dwelling (*rental unit address*) in a follow up to a complaint regarding unsafe hot water tank hook up.

The property is owned by the Estate of BS, the Executor of the Estate is MD who initiated this complaint on/about March 17.

Upon several site visits, I was unable to reach the tennant and make an interior inspection of the property.

On March 25<sup>th</sup> Mr. PS, a second tenant of the property and son of the previous home owner, contacted the BC Safety Authority. A gas inspection with the BC Safety Authority executed an external site inspection. Upon assessment executed an order (attached) for the 20lb propane tank to be disconnected from the water heater immediately. No interior inspection was completed at this time.

Mr. S then contacted me, and under the regulations of the Fire Services Act (Part 1, Section 10), and complaint of unsafe condition, we made key entry into the dwelling without the tenants notice or approval and disconnected the hazard of the propane bottle.

It is my opinion this inadequate connection and feed to the hot water tank was a high risk to Mr. S, the property and the neighbouring houses as this was an extreme fire hazard.

*(reproduced as written with identifiers removed)*

The Fire Chief indicates that copies of this report were sent to MD, PS, the tenant and the BC Safety Authority Gas Inspector.

The tenant agreed that he was responsible for the hydro. The tenant testified that he spoke with the Executor of the Estate, MD seeking permission to hook up the propane tank and he did so because he had been without hot water for weeks.

MD testified that when the tenant asked her about bringing in a propane tank onto the property she assumed he intended it for use outside and had no idea that the tenant intended to use it inside the home. When she realized the tank maybe being used indoors she advised the landlord and he began his attempts to advise the tenant to remove the tank and he also began to seek to make his own inspections which the tenant refused to allow.

### **Analysis and Findings – Landlord's Application**

The *Residential Tenancy Act* allows a landlord to make application to end a tenancy early without service of a Notice to End Tenancy when it would be unreasonable and

unfair to both the landlord and the other occupants of the residential property to wait for a notice to end tenancy for cause to take effect.

CW, landlord's witness testified that she observed the tenant pushing the landlord down the stairs. The tenant does not deny having done so but says he did so because the landlord pushed him first. The landlord's witness denies this. As the landlord's evidence is corroborated by an eye-witness I will accept the landlord's version of events and find that the tenant pushed the landlord down the stairs.

With respect to the issue of the propane tank, I am satisfied that the tenant installed a propane tank in the rental unit home. I am satisfied that this occurred because the tenant admits he did so. While the tenant argues that he had permission to do so, on a balance of probabilities, I believe the testimony of MD finding it reasonable that she granted permission for the tenant to have such a tank believing it would be used safely out-of-doors.

With respect to the danger posed by the installation of the tank, I accept the opinion of the Fire Chief contained in her report that the "...inadequate connection and feed to the hot water tank was a high risk to [the landlord], the property and the neighbouring houses as this was an extreme fire hazard...".

Having accepted that the tenant pushed the landlord and that the tenant installed a hazardous propane tank inside the rental unit, I find that the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord and the other occupant. Further that the tenant has put the landlord's property at significant risk. I find that it would therefore be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 *[landlord's notice: cause]* to take effect. I will therefore grant the landlord's application to end this tenancy early and I will provide the landlord with an Order of Possession.

### **Tenant's Applications**

As this tenancy is ending the tenant's applications as follows are dismissed:

- To cancel a notice to End Tenancy Given for Cause;
- To cancel a Notice to End Tenancy Given for Unpaid Rent;
- An Order compelling the landlord to comply with the Act, regulation or tenancy agreement;
- An Order that the landlord to make emergency repairs for health or safety reasons;
- An Order that the landlord to make repairs to the unit;
- An Order suspending or setting conditions on the landlord's right to enter the rental unit;
- An order authorizing the tenant to change the locks to the rental unit;
- An order allowing the tenant to reduce rent for repairs, services or facilities.

With respect to the tenant's applications for an Order that the landlord return the tenant's personal property and for a monetary Order for compensation for damage or loss in the sum of \$3,300.00 the tenant has submitted insufficient evidence to support these claims. At the hearing the tenant sought an adjournment stating that he could gather the evidence to support these claims. In the alternative the tenant sought that his applications be dismissed with leave to reapply.

With respect to the tenant's requests a hearing is a formal legal process. It is up to an applicant to prepare his case fully and to gather and serve all evidence necessary to proceeded on the appointed hearing date. That the tenant has failed to do so is not a reason to grant an adjournment. I therefore dismiss the tenant's application for an adjournment. Further, due to the lack of evidence to support his application the tenant's claims for the return of personal property and for a monetary order for compensation for damage or loss are dismissed.

As the tenant's applications have been unsuccessful his application to recover the filing fee he paid for this application is also dismissed.

As the landlord's applications have been successful, the landlord's application to recover the filing fee he paid for this application is allowed. The landlord is directed to deduct the sum of \$50.00 from the security deposit he holds on the tenant's account.

### **Conclusion**

The landlord will be provided with an immediate Order of Possession. This Order may be filed in the Supreme Court and enforced as an order of that Court.