

## **DECISION**

Dispute Codes      CNC, DRI, LAT, MNDC, MNR, MT, OLC, SS, FF

### Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking orders to cancel a one month Notice to End Tenancy for cause, to dispute an additional rent increase, to authorize the Tenant to change locks in the rental unit, for compensation under the Act or tenancy agreement, for the cost of emergency repairs, allow the Tenant more time to make an Application for Dispute Resolution to cancel a Notice to End Tenancy, an order for the Landlord to comply with the Act or tenancy agreement, to serve documents in a different way than required under the act and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

At the outset of the hearing the Tenant requested an adjournment because he was having trouble contacting a witness he wanted to call who has no phone and he wanted a court reporter present to record the proceedings.

It was unclear how the Tenant would contact the witness or how the witness could appear at a hearing by telephone conference call when he has no phone, even if an adjournment was granted. Furthermore, the rules of procedure, section 9.2, require the Tenant to provide written notice to the other party and the Branch at least two business days in advance of the hearing to request a court reporter make an official hearing. The Tenant failed to make such a request.

The Tenant filed his Application on May 11, 2010, and the hearing was scheduled for more than six weeks later, on June 30, 2010. I find the Tenant had ample opportunity to make the arrangements for his witness to appear and to have a court reporter present. I further find that the delay would prejudice the Landlord.

Therefore, for these reasons I denied the Tenant's request for an adjournment.

I also note the Tenant has applied for more time to dispute the Notice to End Tenancy. The Landlord served the Tenant with the Notice to End Tenancy by registered mail, sent on May 4, 2010. Under the Act the Tenant is deemed served by registered mail five days later, on May 9, 2010. The Tenant filed this Application on May 11, 2010, and therefore, he filed this Application on time and there is no reason to deal with the issue of extending time to file and this issue is dismissed.

### Issues(s) to be Decided

Has the Tenant shown that the Notice to End Tenancy is invalid or should be cancelled?

Is the Tenant entitled to the other relief sought?

### Background and Evidence

These parties have been involved in one prior Dispute Resolution hearing in October of 2008, regarding the Tenant not cooperating with the Landlord for unit inspections. In that Decision the Landlord was found to be complying with the Act, however, the Dispute Resolution Officer found the Notice to End Tenancy in that case should not be cancelled. The Officer wrote in her Decision:

“While I find that the tenant’s refusal to allow the landlord entry to the suite to be annoying and frustrating, I also find the refusal has not yet reached the proportion required to end this tenancy for cause at this time.”

The Landlord submits that since the past hearing the Tenant has continued to deny access to the rental unit and other serious problems have developed.

As a result of an annual inspection at the rental unit, the Agent for the Landlord wrote to the Tenant regarding the state of his rental unit on March 25, 2010. In this letter the Landlord advised the Tenant to have the unit cleaned of excess debris by April 27, 2010. The Tenant was also notified in this letter that an inspection of his unit would be done on April 27, between 9:00 a.m. and 11:30 a.m. The letter includes this caution to the Tenant, “Please note that failure to comply will result in termination of your tenancy.”

On April 27, 2010, two Agents for the Landlord attended the rental unit for the inspection.

The Landlord submits the Tenant refused to allow access to the rental unit for the inspection to occur.

The Tenant testified he did not refuse entry to the Agents, rather he informed them he would only allow one Agent in at a time. The Agent testified that their policy is to have two Agents enter a unit for this type of inspection. At this time the Agents were unable to complete this inspection.

Following this, the Landlord served the Tenant with the one month Notice to End Tenancy for cause, alleging the Tenant has seriously jeopardized the health or safety or lawful right of another occupant or the Landlord (the "Notice"). The Notice has an effective end date of June 10, 2010, however, under the Act that date would self correct to June 30, 2010.

The Agent for the Landlord further testified that they have an ongoing concern for the state of the rental unit and also they are fighting an infestation of bed bugs in the building, which requires an inspection of the rental unit.

The Landlord submits that the Tenant has also denied access to trades people to enter the rental unit. The Landlord also submits that the Tenant has videotaped trades people working on the Landlord's property. For example, in August of 2009, the Landlord wrote to the Tenant warning him he, "... cannot hold up work required in your unit." This letter also requested that the Tenant, "... cease and desist from videotaping contractors, tenants, visitors and employees of the landlord."

The Agent for the Landlord testified that the Tenant continues to deny access and by all his actions, the Landlord had no other option but to issue the Notice and to seek an order of possession in this hearing.

The Tenant testified he has videotaped trades people around the Landlord's property because he thinks they will not finish their work. He testified that he has had three floods in his rental unit and has had a problem with mold in the rental unit for the past 10 months. He testified he did not want the Landlord's contractors doing the repairs in the rental unit because he is concerned they will simply tear down the drywall and then leave and not repair the unit. He requested a written assurance from the Landlord that the work would be completed and stated when no letter was given, he had a dehumidifier put in his unit for five weeks. He testified that even after five weeks of the dehumidifier his walls and ceiling were still wet.

He testified he felt insulted when the Landlord suggested he may have bedbugs in his unit, as he is very clean and tidy individual.

The Tenant also testified that he has computer equipment, many books and resources, and legal documents in his room, and intends on attending graduate studies in the near future. He submits the Landlord has no right to restrict what he has in his rental unit. He denied there was clutter in the rental unit. He went on to testify that he sees the Agent for the Landlord walking around the complex with a large purse and he suggested that her purse was filled with clutter.

The Tenant submitted many pages of evidence, however, much of this was related to the 2008 hearing or irrelevant accusations against the Landlord's Agents.

### Analysis

Based on the foregoing, the testimony and evidence, and on a balance of probabilities, I find that the Tenant has insufficient evidence to prove that the Notice to End Tenancy should be cancelled, and therefore, his Application is dismissed.

By his own admissions the Tenant has interfered with the Landlord's right to access the rental unit. He stated the Act does not prevent him from setting conditions on the Landlord's right to enter the unit. While that may be so, the Act also does not provide the Tenant with a right to restrict access to the rental unit by the Landlord, or to dictate the terms of how the Landlord's Agents may conduct their work on behalf of the Landlord.

Moreover, the Tenant acknowledged he has mold in the rental unit and he has not allowed the Landlord's trades people or contractors to enter the rental unit, unless they comply with his conditions to enter. He has videotaped contractors and refused them access to the unit. He has set conditions on how the Landlord's Agents must conduct their work.

The Landlord has a lawful right, and indeed a duty under the Act, to inspect, protect, and make repairs to its property.

This leads me to find that the actions of the Tenant, as recounted herein, have seriously jeopardized the lawful rights of the Landlord and therefore, I find that the Notice is valid and should not be cancelled. I dismiss the whole of the Tenant's Application, as I find the tenancy is ending and the other claims of the Tenant have insufficient evidence to support them and or they lack merit.

As the Tenant's Application has been dismissed, and the Landlord orally requested an order of possession during the hearing, I must grant that request under section 55 of the Act.

The Landlord requested the order be effective 30 days from the date of the hearing, which would be July 30, 2010, and that the Tenant would promise to leave peaceably and not file for a Review of this Decision.

While the Tenant acknowledged he would leave peaceably, I find that neither the Landlord nor this Dispute Resolution Officer are able to restrict the Tenant's right to a Review of this decision, should he choose to do so.

Therefore, I grant the Landlord an order of possession for the rental unit **effective at 1:00 p.m. July 30, 2010**. This order may be filed and enforced through the British Columbia Supreme 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: July 5, 2010.

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Dispute Resolution Officer