

## DECISION

Dispute Codes      CNR, LRE

### Introduction

This matter dealt with an application by the Tenant to cancel a 10 Day Notice to End Tenancy for Unpaid Rent dated April 16, 2010 and for an Order placing restrictions on the Landlord's right to enter the rental unit.

### Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Is an Order required to restrict the Landlord's right to enter the rental unit?

### Background and Evidence

This tenancy started on October 1, 2009. Rent is \$550.00 per month payable in advance on the 1<sup>st</sup> day of each month. On April 16, 2010, the Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent by posting it to the rental unit door.

The Parties agree that the Tenant had rent arrears of \$215.00 for March 2010. The Tenant said he tried to pay the Landlord \$750.00 on April 1, 2010 (for March arrears and April rent) but the Landlord would not take his payment. The Tenant said that he was too ill to work after he received the 10 day Notice and has made no attempt to pay outstanding rent for March, April, May or June 2010.

The Landlord thought the Tenant tried to pay him just prior to May 1<sup>st</sup>, however he was unsure of the date or the amount the Tenant had offered.

### Analysis

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the overdue rent or apply for dispute resolution. If a Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time. Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy 3 days after it was posted, or in this case, on April 19, 2010.

Although the Tenant filed an application to cancel the 10 Day Notice within the 5 day time limit under the Act, I find that there are no grounds to support his application. In particular, even if the Landlord refused to accept the Tenant's rent payment on April 1, 2010 as he claimed, the Tenant's further evidence was that he made no attempt to pay

the rent arrears *after* he was served with the 10 Day Notice on April 16, 2010. Furthermore, the Tenant admitted that when he offered his payment to the Landlord it was for \$750.00 which was still \$15.00 short of the amount outstanding. For all of these reasons, the Tenant's application to cancel the 10 Day Notice for Unpaid Rent dated April 16, 2010 is dismissed without leave to reapply.

The Landlord requested and I find pursuant to s. 55(1) of the Act that he is entitled to an Order of Possession to take effect at 1:00 p.m. on June 23, 2010.

I also find that there are no grounds for the Tenant's application for an Order restricting the Landlord's right to enter the rental unit. The Tenant admitted that the Landlord had not entered the rental unit without his consent or without proper written notice. Instead, the Tenant claimed that he just wanted privacy and an uninterrupted opportunity to clean the rental unit. Section 28 of the Act says (in part) that a Tenant is entitled to quiet enjoyment including but not limited to the right to reasonable privacy and freedom from unreasonable disturbance. In the absence of any evidence that the Landlord has breached the Tenant's rights under s. 28 of the Act, the Tenant's application for an Order restricting the Landlord's right to enter the rental unit is dismissed without leave to reapply.

### Conclusion

The Tenant's application is dismissed without leave to reapply. An Order of Possession to take effect on June 23, 2010 has been issued to the Landlord. A copy of the Order must be served on the Tenant and 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: June 09, 2010.

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Dispute Resolution Officer