



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

**Dispute Codes** MT, CNC, MNR, RR, FF

### **Introduction**

This is the Tenant's application to be allowed more time to file an application to cancel a Notice to End Tenancy for Cause; to cancel a Notice to End Tenancy for Cause; for a Monetary Order for the cost of emergency repairs; to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the cost of the filing fee from the Landlords.

The parties gave affirmed testimony at the Hearing.

### **Preliminary Matters**

#### **Tenant's application to adjourn the Hearing**

At the outset of the Hearing, the Tenant applied to adjourn this matter, so that it could be heard with another Application she has filed. This other application has been scheduled to be heard on September 24, 2010.

This Hearing was scheduled, in part, to deal with the Tenant's application to be allowed more time to file an application to cancel a Notice to End Tenancy. Section 66(3) of the Residential Tenancy Act (the Act) states:

**Director's orders: changing time limits**

- 66** (3) The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

The Tenant testified that she received the One Month Notice to End Tenancy for Cause on July 9, 2010. Monthly rent is due on the first day of each month and therefore, pursuant to the provisions of Section 47(2) of the Act, the effective date of the Notice is August 31, 2010. Section 47(2) of the Act states:

**Landlord's notice: cause**

- 47** (2) A notice under this section must end the tenancy effective on a date that is
- (a) not earlier than one month after the date the notice is received, and
  - (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Therefore, pursuant to the provisions of Section 66(3) of the Act, the Tenant's application to adjourn the Hearing until September 24, 2010 is dismissed.

Tenant's application to extend the time allowed to file her application to cancel the Notice to End Tenancy

A tenant's application for an extension of time to file an application to cancel a Notice to End Tenancy may be granted if the tenant has proof that there were serious and compelling reasons for not filing the application on time.

The Tenant testified that she was out of town from July 2 to July 9, 2010. She received the Notice to End Tenancy on July 9, 2010, and therefore I do not find this to be a compelling reason for not filing on time.

The Tenant testified that she was being harassed by her roommate. The Tenant did not provide proof of such harassment, or explain how this caused her to file her application late.

The Tenant testified that she was in and out of hospital, but did not provide dates or proof of hospitalization.

The Tenant has not provided proof of serious or compelling reasons for not filing her application on time and I dismiss her application for an extension of time. Therefore, her application for an extension of time to cancel the Notice to End Tenancy is dismissed, and her application to cancel the Notice will not be heard.

### **Issues(s) to be Decided**

- Is the Tenant entitled to a monetary order for the cost of emergency repairs?
- Is the Tenant entitled to a reduction in rent for repairs, services or facilities agreed upon by not provided?

### **Background and Evidence**

The Tenant did not provide any testimony or documentary evidence to support her application for a monetary order or a reduction in rent.

The Landlords stated that they wanted to end the tenancy and asked for an Order of Possession effective August 31, 2010.

### **Analysis**

Section 33 of the Act states:

#### **Emergency repairs**

**33** (1) In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing

- (i) major leaks in pipes or the roof,
- (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
- (iii) the primary heating system,
- (iv) damaged or defective locks that give access to a rental unit,
- (v) the electrical systems, or
- (vi) in prescribed circumstances, a rental unit or residential property.

(2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4) A landlord may take over completion of an emergency repair at any time.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

- (a) claims reimbursement for those amounts from the landlord, and
- (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

- (a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;
- (b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);
- (c) the amounts represent more than a reasonable cost for the repairs;

(d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

This is the Tenant's application for a monetary order, and therefore it is her responsibility to prove her claim. The Tenant did not provide evidence that she had complied with Section 33(3) of the Act; did not indicate on her application the amount of money she was requesting for emergency repairs; and did not provide any documentary evidence that she had made emergency repairs to the rental unit.

The tenancy has ended and therefore the Tenant's application for a reduction in rent 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.

Pursuant to the provisions of Section 55(1) of the Act, I hereby provide the Landlords with an Order of Possession **effective 1:00 p.m., August 31, 2010.**

The Tenant applied to recover the cost of the filing fee from the Landlords, but there is no indication that she paid a filing fee. In any event, the Tenant has not been

successful in her application, and therefore she is not entitled to recover any cost for filing the application.

### **Conclusion**

The Tenant's application is dismissed in its entirety.

I hereby provide the Landlords with an Order of Possession **effective 1:00 p.m., August 31, 2010**. 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 25, 2010.

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Dispute Resolution Officer