



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes      CNR

### Introduction

This matter dealt with an application by the Tenants to cancel a Notice to End Tenancy for unpaid rent.

The Tenant said she served the Landlords with the Application and Notice of Hearing (the “hearing package”) by personal delivery on or about December 8, 2010. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenants’ hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

### Issues(s) to be Decided

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?

### Background and Evidence

This tenancy started on August 1, 2010 as a month to month tenancy. Rent is \$1,400.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$700.00 in August, 2010.

The Landlord said he served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities dated December 2, 2010. He served the Notice on December 2, 2010 by personal delivery to the Tenants. The Effective Vacancy date on the Notice was December 12, 2010. The Tenants are living in the unit and the Landlord requested an Order of Possession if the Tenant’s application is unsuccessful.

The Landlord continued to say that the Tenants have unpaid rent of \$183.34 for December, 2010 and \$650.00 of unpaid rent for January, 2011. As well, the Landlord said there are unpaid utilities of \$343.07 as of January, 2011.

The Tenant said the Ministry of Social Services held the rent checks for December and January because the Landlord phoned the Ministry and said the Tenants were moving out of the unit. She said she has spoken to the Ministry and the checks are available now. The Tenant continued to say that she called the Landlord and left a message on his voice mail saying that she had the rent money and she would pay it as soon as they

Residential Tenancy Branch  
Ministry of Housing and Social Development

got together. The Tenant did agree that the rent for December, 2010 and January, 2011 has not been paid in full. The Tenant also asked the Landlord for some time to correct the situation as they had a death in the family and they were going through a very difficult period.

The Landlord said he did not phone the Ministry regarding the Tenants or the unpaid rent and he did talk to the Tenant about making the unpaid rent payments in mid December, but the payments were not made. The Landlord said he wants to end the tenancy.

## Analysis

Section 26(1) says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The Tenant does not have the right to withhold all or a portion of the rent from the Landlord when it is due therefore; I find the Tenant has not established grounds to be granted an order to cancel the Notice to End Tenancy. The Landlord's 10 Day Notice to End Tenancy dated December 2, 2010 stands in effect and consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect January 15, 2011 after service of it on the Tenants.

## Conclusion

The Tenant's application to cancel the Notice to End Tenancy is dismissed without leave to reapply.

An Order of Possession effective January 15, 2011, after service of it on the Tenant has been issued to the Landlord. A copy of the Order must be served on the Tenant in accordance with the Act: the Order of Possession 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: January 04, 2011.

---

Dispute Resolution Officer