



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      ET

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to end to the tenancy early and obtain an Order of Possession.

Service of the hearing documents, by the Landlord to the Tenant were posted to the Tenant's door. The Tenant confirmed receipt of the hearing package.

The Landlord and Tenant appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

### Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Landlord met the burden of proof to show that breach is so severe the tenancy must end without proper notice to the Tenant?

### Background and Evidence

The Landlord testified that he entered into a verbal tenancy agreement but that the agreement was not with the respondent named in this application for dispute resolution. The Landlord stated this person is not his tenant but rather a roommate of his tenant. After further clarification the Landlord stated that he has accepted rent directly from the roommate but could not provide testimony as to when these payments were received. He could not say when the named respondent began to occupy the rental property.

The Landlord stated the rent was payable on the first of each month in the amount of \$750.00 plus the cost of hydro. The hydro bills have not been paid since his tenant, the person who the Landlord entered into the verbal tenancy agreement with, moved out five months ago. The hydro has been turned off since October 2010 and the Landlord

is concerned his property will begin to mold if it is not properly heated. The Landlord wants to end this tenancy as the named respondent is not paying rent or the hydro bill.

The Tenant testified he has occupied the rental unit since November 2008 and that he has a copy of his income assistance form "intent to rent" which is dated November 4, 2008. The form states he has rented a room for \$375.00 per month and utilities are included in the cost of rent. He confirmed that at the beginning there were two other roommates renting rooms and they would share the common areas. He has attempted to get other roommates for the Landlord however no one wants to rent a place that does not have hydro. He stated that he went to put the hydro into his own name and found out that there is an outstanding balance owed of over \$500.00 so they will not reinstate the hydro service until the previous balance is paid.

### Analysis

In making an application for an early end to this tenancy the Landlord has the burden of proving that there is cause for ending the tenancy, such as unreasonably disturbing other occupants, seriously jeopardizing the health and safety or lawful right or interest of the landlord and placing the landlord's property at significant risk, and by proving that it would be unreasonable or unfair to the Landlord or other occupants to wait for a one month Notice to End Tenancy for cause under section 47 of the *Act* to take effect.

I am not satisfied that the Landlord has met the burden of showing that it would be unreasonable or unfair for a one month Notice to End Tenancy to take effect, or a 10 Day Notice to End Tenancy for unpaid rent.

I make this finding for several reasons. First of all, I accept the Tenant's testimony that he entered into a tenancy agreement to rent a room in November 2008 and rent would be payable in the amount of \$375.00 which included hydro. Since his roommates vacated the property he has been paying his rent directly to the Landlord and therefore established a tenancy agreement directly with the Landlord. Based on the aforementioned, I am satisfied that the named participant to this dispute is a Tenant. The Landlord was not able to provide testimony to the start date of the tenancy or when he began to take rent payments directly from this Tenant. He does not have a written tenancy agreement and appears to ignore the requirements set forth under the *Act*. The Landlord knew the hydro was disconnected at the rental property at the beginning of October 2010, three months ago, and made no effort prior to this to resolve the hydro issue by ending the tenancy. That being said, I am of the opinion that the Landlord is the author of his own misfortune as he has failed to comply with the *Residential Tenancy Act* which has now placed the Tenant in rental accommodations without hydro.

Based on the aforementioned I find the Tenant has not seriously jeopardized the lawful right or interest of the Landlord and has not placed the Landlord's property at significant risk.

The Landlord may well be able to show that there are grounds to end this tenancy pursuant to sections 46 or 47 of the *Act* after service of a valid Notice to End Tenancy; however, I am not satisfied that the circumstances warrant an early end to the tenancy, therefore I dismiss the Landlord's application .

As the Landlord has not been successful with their application I decline to award the Landlord recovery of the filing fee.

The Landlord provided a 10 Day Notice to End Tenancy issued January 1, 2011 for \$4,393.00 unpaid rent due on January 1, 2011 in his evidence. A notice for late payment of rent cannot be issued on the day the rent is due, in this case the first of the month, as rent was not considered unpaid until the second of the month, the day after it was due. Therefore, I find the 10 Day Notice to be invalid and of no force or effect. I note that the Tenant is at liberty to make application for dispute resolution and provide evidence to resolve these issues if he wishes to continue this tenancy.

I have included with my decision a copy of "A Guide for Landlords and Tenants in British Columbia" and I encourage the parties to familiarize themselves with their rights and responsibilities as set forth under the *Residential Tenancy Act*.

### Conclusion

I HEREBY DISMISS the Landlord's application, without leave to reapply.

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 31, 2011.

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Residential Tenancy Branch