



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

### Dispute Codes

CNC, OLC, OPC, ERP, RP, FF, O

### Introduction

This hearing dealt with cross applications. Both parties appeared at the hearing and were provided the opportunity to be heard with respect to matters determined to be relevant to these applications.

The tenants submitted an amendment to their application to include a claim for monetary compensation from the landlords. The landlords and the Residential Tenancy Branch were served with the amended application and evidence on January 19, 2011. The Rules of Procedure require that an amended application must be served upon the other party and the Residential Tenancy Branch at least seven (7) days before a hearing. Therefore, I did not accept the amended application and the tenant was informed of the right to make another application for monetary compensation.

The tenants had also provided a written submission and audio recording as evidence for this hearing by serving the landlords and the Residential Tenancy Branch on January 19, 2011. The Rules of Procedure provide that evidence must be received by the other party and the Residential Tenancy Branch at least five (5) days before a hearing. The Rules of Procedure defines "days" to exclude the day of service and the day of the hearing. Further, weekends are excluded where a business or office, including the Residential Tenancy Branch, is served. The tenants' documents were served upon the Residential Tenancy Branch only three clear days before the hearing.

The tenant was informed that he failed to provide evidence to the Residential Tenancy Branch at least five days before the hearing. The tenant submitted that he had overheard a Residential Tenancy Branch employee inform another client that days did not mean business days. While this is correct for service upon individuals, it is not sufficient for service upon a business or office or Residential Tenancy Branch. I did not find the tenant's submission of information he overheard given to another client to be sufficiently compelling to accept late evidence.

The tenant also submitted that he has a disability that hindered his ability to gather and submit evidence within the time limits required by the Rules of Procedure. However, the tenant did not explain why the co-tenant could not aid in meeting the time limits or why the tenant's father, who appeared at the hearing to assist the tenant, could not have

assisted the tenant. Therefore, I find the disability of one co-tenant not sufficiently compelling to permit service of late evidence.

In light of the above considerations, I did not accept or consider the tenants' late evidence in making this decision.

The tenants made an Application to cancel a Notice to End Tenancy, among other requests for repairs and compliance by the landlords. However, the tenants did not submit a copy of the Notice they wished to dispute and have cancelled, despite the instructions contained in the hearing package and as indicated on the Notice of Hearing provided to the tenants.

Providing a copy of the Notice to End Tenancy document is not a mere technicality. The Act requires that an applicant provide full particulars of the dispute that is to be the subject of a dispute resolution hearing. Other than ticking the box on the application that indicates the tenants are seeking to cancel a Notice to End Tenancy for Cause, the tenants did not provide particulars related to the Notice on their application or a copy of the Notice to End Tenancy served upon them. It is hard to imagine another document being more relevant or material to the tenants' application to cancel a Notice to End Tenancy.

As the tenants failed to provide full particulars of the Notice or a copy of the Notice, I find the tenants have provided insufficient evidence to support their application to have a Notice to End Tenancy cancelled. Therefore, I dismissed the tenants' application to cancel a Notice to End Tenancy.

The landlords did not provide a copy of the Notice to End Tenancy to the Residential Tenancy Branch prior to this hearing. The landlord also had an obligation to serve the Residential Tenancy Branch with a copy of the Notice to End Tenancy as evidence to support the landlord's application. Therefore, I also dismissed the landlords' application.

I encouraged and assisted the parties for a significant amount of time in an attempt to reach a mutual resolution during the hearing. The landlords orally requested an Order of Possession be provided to them during the hearing.

The tenant was asked to describe what emergency repairs are outstanding. The tenant indicated one issue has since been resolved and that the other emergency repair relates to fireproofing between the units.

#### Issue(s) to be Decided

Can the parties reach a mutual agreement to resolve their dispute?

Are the landlords entitled to an Order of Possession?

Is it necessary to issue Orders for emergency repairs required?

### Background and evidence

It is undisputed that the tenants live in a basement suite below the landlords' residence. The landlords' unit has hardwood floors. On December 31, 2010 the landlords issued the tenants a 1 Month Notice to End Tenancy for Cause with an effective date of February 28, 2011.

During discussions in an attempt to mutually resolve this dispute it was acknowledged that the tenant yells and bangs on the ceiling of the rental unit when the tenant believes the landlords or the landlords' children or the landlords' guests are being too loud.

The tenant did not deny that he yells and bangs on the ceiling but attempted to justify the behaviour by describing the noise coming from the landlords' residence as intolerable and described the living situation as akin to being tortured. The landlords expressed concern over their fear of making any noise that will irritate the tenant as the tenants' behaviour frightens their children and the landlords' are unable to enjoy their unit.

In the event the tenancy was to end the tenant was seeking an additional five to six months due to his disability. The landlords expressed a willingness to permit the tenancy to continue until March 31, 2011. The parties reached an impasse in their discussions and it is before me to make a decision in accordance with the provisions of the Act.

### Analysis

Section 55 of the Act provides for ways an Order of Possession will be granted to the landlord. Section 55(1) provides as follows:

- 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.

[my emphasis added]

In this case, I have dismissed the tenants' application to cancel the Notice to End Tenancy and the landlords orally requested an Order of Possession. Since section 55(1) uses the word "must" I do not have discretion in providing the Order of Possession to the landlords. Accordingly, the landlords are provided with an Order of Possession with this decision to serve upon the tenants.

In consideration of the tenant's disability and the landlords' willingness to consider extending the tenancy until March 2011, I provide the landlords with an **Order of Possession effective at 1:00 p.m. on March 31, 2011.** The Order of Possession must be served upon the tenants and may be enforced in The Supreme Court of British Columbia as an Order of the court.

It is important to note that even if the tenants had provided a copy of the Notice to End Tenancy it is highly likely the tenancy would be ended for cause. As explained to the tenant during the hearing, the tenant's undisputed behaviour is highly inappropriate and not justifiable in any situation. Although the tenant was of the position that the landlords unreasonably disturbed his right to quiet enjoyment, the tenant's remedy is not to turn around and unreasonably disturb the landlords. Under the Act, where a tenant is unreasonably disturbed by the landlord the tenant's remedy is to seek Orders for compliance against the landlord and request compensation. However, where a landlord is unreasonably disturbed by a tenant, the landlord's remedy is to terminate the tenancy by issuing a 1 Month Notice to End Tenancy for Cause which was done in this case.

The tenants are at liberty to make another Application for Dispute Resolution to seek compensation from the landlords for loss of quiet enjoyment; however, it should be emphasized that I have no finding of fact in this decision as to whether the landlords have violated the tenants' right to quiet enjoyment.

With respect to the tenants' request for emergency repairs I find the tenant did not present sufficient evidence to conclude that there was an urgent need for fireproofing between units and I make no order for emergency repairs.

### Conclusion

The tenancy shall end and the landlords have been provided an Order of Possession effective March 31, 2011.

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 26, 2011.

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Residential Tenancy Branch