



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      CNR, MNDC, OLC, ERP, RP

### Introduction

This matter dealt with an application by the Tenant to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, for compensation for damage or loss under the Act or tenancy agreement and for an Order that the Landlords comply with the Act by making emergency repairs and/or general repairs.

At the beginning of the hearing, the Tenant sought an adjournment on the grounds that he needed more time to track payments he allegedly made by Canada Post money orders in support of his application to cancel a 10 Day Notice. The Landlords objected to an adjournment as they claim that the Tenant has not paid rent for approximately 3 months and that they argued that they would be prejudiced by a further delay. The Tenant said he placed a request with Canada Post approximately a week ago to have the money orders tracked but was uncertain when he might receive the information he had requested. Given that the Tenant provided no evidence to corroborate his claim that he was tracking these alleged payments and given further that the Tenant was unable to provide the tracking numbers of the alleged money orders he said he had recently supplied to Canada Post, I denied the Tenant's application for an adjournment.

### Issue(s) to be Decided

1. Do the Landlords have grounds to end the tenancy?
2. Are repairs or emergency repairs required?

### Background and Evidence

This month-to-month tenancy started in March 2010. Rent is \$870.00 per month payable in advance on the 1<sup>st</sup> day of each month. The Parties agree that the Tenant started falling behind in his rent in April 2010 and that by September 2010, he had arrears of \$985.00 as set out on a receipt dated September 2, 2010.

The Landlord said the Tenant made a payment of \$100.00 by money order at the beginning of October 2010 and neither he nor his roommate made any further payment after that date. The Landlord admitted that in a previous hearing held on November 2, 2010 he agreed that the Tenant did not have to pay rent for November 2010. The Landlord said the Tenant has total rent arrears of \$3,495.00 which include accrued

arrears to September 2010 of \$985.00, unpaid rent for October of \$770.00 and unpaid rent for each of December 2010 and January 2011 of \$870.00. The Landlord said the Tenant gave him a written "one month" notice on December 1, 2010 that he and his roommate were ending the tenancy. Consequently, the Landlord said he did not see any point in serving the Tenant with a Notice to End Tenancy when he did not pay rent for December 2010. However, the Landlord claimed that when the Tenant failed to move out in January 2011, he served the Tenant in person on January 4, 2011 with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 4, 2011.

The Tenant claims that the date on the Notice with which he was served was January 14, 2011 but he said he could not recall when he received it from the Landlord. The Tenant also claimed that he paid rent for December 2010 in early December and that his roommate paid rent for January 2011 on or about January 2, 2011. The Tenant said all of these payments were made by Canada Post money orders but he provided no evidence of them. The Tenant initially said he asked the Landlord to give him the Notice to End Tenancy in the mistaken belief that he needed one in order to make an application for compensation for moving expenses. However, the Tenant could not explain why he held this belief given that he applied for compensation in a previous hearing held on November 2, 2010 without applying to cancel a Notice to End Tenancy. The Tenant also claimed that the Landlord was seeking to evict him because the tenant was rallying other tenants of the rental property to put pressure on the Landlord to have the property professionally treated for a bedbug infestation.

### 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.

The Landlords claim the Tenant was served with the 10 Day Notice dated January 4, 2011 on January 4, 2011, however the Tenant says the Notice he received was dated January 14, 2011. The Tenant's application for dispute resolution to cancel the 10 Day Notice was filed on January 14, 2011. However 2 days earlier, on January 12, 2011, the Tenant filed an application for a fee waiver and submitted 2 pages of written submissions dated January 12, 2011 in support of his application which refutes the Landlords' allegation that rent was in arrears for 3 months. In the circumstances, I find the Landlords' evidence regarding the date of service of the Notice more reliable and conclude that the Tenant was served in person on January 4, 2011 with a 10 Day Notice dated January 4, 2011. As a result, I find that the Tenant did not apply to cancel the Notice within the 5 days granted under s. 46(4) of the Act.

Even if I accepted the Tenant's evidence that the 10 Day Notice with which he was served was dated January 14, 2011 (and I do not), I find that his application to cancel

the Notice must still be dismissed for the following reason. Section 26(2) of the Act says that a Landlord must provide a tenant with a receipt for rent paid in cash. A landlord is not required to give a tenant a receipt for a payment made by money order, for example, because the Tenant will receive proof of its purchase and be able to find out if the money order was cashed by the payee. In this case, the Landlord provided evidence to show that there were rent arrears (of at least \$985.00) however the Tenant provided no evidence to support his claim that all outstanding rent had been paid in full. Consequently, I find on a balance of probabilities that there are rent arrears as alleged by the Landlords on the 10 Day Notice that remain unpaid by the Tenant.

I find that the Tenant has not paid the overdue rent and has not applied for dispute resolution within the 5 days granted under s. 46(4) of the Act. Consequently, the Tenant's application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 4, 2011 is dismissed without leave to reapply. The Landlords requested and I find pursuant to s. 55(1) of the Act that the Landlords are entitled to an Order of Possession to take effect 2 days after service of it on the Tenant.

As the tenancy will be ending, I find that it is unnecessary to make an order for repairs and/or emergency repairs and that part of the Tenant's application is dismissed without leave to reapply. RTB Rule of Procedure 2.3 states that "if in the course of the dispute resolution proceeding, the Dispute Resolution Officer determines that it is appropriate to do so, the Dispute Resolution Officer may dismiss unrelated disputes contained in a single application with or without leave to reapply." The Tenant said he was seeking compensation from the Landlords so that he could pay a fumigator to treat his and his roommate's belongings (for a bedbug infestation) as well as for moving expenses so that they could move to new accommodations. In these circumstances, I find that the Tenant's claim for compensation is unrelated to his application to cancel a Notice to End Tenancy and it is dismissed with leave to reapply.

### Conclusion

The Tenant's application to cancel a 10 Day Notice and for an Order requiring the Landlords to make repairs is dismissed without leave to re-apply. The Tenant's application for compensation is dismissed with leave to re-apply.

An Order of Possession effective 2 days after service of it on the Tenant has been issued to the Landlords. 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: January 31, 2011.

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Residential Tenancy Branch