



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

**Dispute Codes**      CNR, MNDC, OLC, RR, O

### **Introduction**

This hearing was convened by way of conference call to deal with the tenant's application for an order cancelling a notice to end tenancy for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; and for an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

Both landlords and the tenant attended the conference call hearing. At the outset of the hearing, the tenant applied to adjourn this hearing for health reasons. He stated that he was under the care of a physician and currently on medications that prevent him from properly making his claim and have prevented him from providing to the Residential Tenancy Branch and the landlords all evidence that he intends to rely on. The landlords opposed the application for adjournment. The landlords stated that rent has not been paid and apply for an Order of Possession.

In the circumstances, I made a finding that the landlords would be prejudiced from the adjournment requested by the tenant. The hearing proceeded only for the portion of the tenant's claim dealing with the notice to end the tenancy. All other applications in the Tenant's Application for Dispute Resolution are hereby adjourned. A notice of hearing setting out the date and time of the next hearing will be provided to the parties in a separate mailing.

The parties all gave affirmed testimony. All information and testimony provided with respect to the notice to end the tenancy have been reviewed and is considered in this Decision.

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

Is the tenant entitled to an order cancelling a notice to end tenancy for unpaid rent or utilities?

### **Background and Evidence**

This month-to-month tenancy began on August 1, 2003 with this tenant and a co-tenant. Rent in the amount of \$1,293.00 per month is currently payable in advance on the 1<sup>st</sup> day of each month. At the outset of the tenancy, the landlords collected a security deposit from the tenants in the amount of \$560.00.

The tenant testified that the co-tenant left the rental unit due to the actions of the landlords. He further testified that he received a letter from the landlords after the co-tenant had given her notice, stating that it is a joint tenancy, meaning that both tenants would have to vacate the unit by January 31, 2011, and that both tenants were still bound by the tenancy agreement until January 31, 2011. He further testified that he needs a roommate to afford the rent, and was not able to find a roommate for one month, which would be required due to the landlords' letter. He feels that it will not be difficult to find a roommate and will be able to pay the rent for January and February in a few weeks time.

The tenant further testified that the landlord has entered the rental unit without giving proper written notice as required by the *Act*, and that difficulties caused by the landlord have been the contributing factor to the co-tenant vacating the rental unit, although he did not elaborate.

The landlords testified that on December 1, 2010 the co-tenant gave written notice to the landlords indicating that she intended to vacate the rental unit on December 31, 2010 and requesting that her name be removed from the tenancy agreement. They stated that the tenants had always each paid half the rent. The landlords also believed that if one tenant moved, the tenancy agreement ended and both tenants would be required to move. The co-tenant did not give written notice the day before rent is payable, and therefore, under the *Residential Tenancy Act*, both tenants are still liable for rent for the month of January, 2011. Further, any rent collected after December, 2010 would be for use and occupancy only, and the landlords do not wish to reinstate the tenancy with this tenant.

The landlords further testified that rent for the month of January, 2011 had not been paid, and on January 2, 2011 the male landlord served the tenant personally with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which was provided in advance of the hearing. Rent has still not been paid for January, and the landlords fear that the tenant will not be able to fulfill the obligation in future months, and the landlords request an Order of Possession. The landlords also stated that they would be agreeable to the Order of Possession having an effective date of January 31, 2011.

## **Analysis**

The *Residential Tenancy Act* states that at any time after rent is payable under the tenancy agreement, the landlord may serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. After that, the tenant has 5 days to dispute the notice or pay the rent in full. If the rent is paid in full, the notice to end the tenancy has no effect. If the tenant does not apply for dispute resolution or pay the rent within the 5 days, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and the tenant must vacate the rental unit.

The *Act* also states that a tenant is required to pay rent whether or not the landlord has complied with the *Act* or the tenancy agreement.

With respect to the issue of the co-tenant, I refer to Residential Tenancy Branch Policy Guideline 13 which states as follows:

“Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.”

And further:

“Where co-tenants have entered into a periodic tenancy, and one tenant moves out, that tenant may be held responsible for any debt or damages relating to the tenancy until the tenancy agreement has been legally ended. If the tenant who moves out gives proper notice to end the tenancy the tenancy agreement will end on the effective date of that notice, and all tenants must move out, even where the notice has not been signed by all tenants. If any of the tenants remain in the premises and continue to pay rent after the date the notice took effect, the parties may be found to have entered into a new tenancy agreement. The tenant who moved out is not responsible for carrying out this new agreement.”

In the evidence that I have before me, I find that the tenant has applied for dispute resolution within the time required under the *Act*. I also find that the co-tenant who moved from the rental unit did not give sufficient notice to vacate the rental unit on December 31, 2010 as required under the *Act*:

**45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice, and
- (b) is 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.

In this case, the tenancy agreement states that rent is payable in advance on the 1<sup>st</sup> day of each month. Therefore, I find that the co-tenant's notice takes effect on January 31, 2011.

I further find that the landlords have not reinstated the tenancy and the tenant has not continued to pay the rent after the date the co-tenant's notice took effect.

I further find that the tenant has not paid the rent and the landlords are therefore entitled to an Order of Possession.

### **Conclusion**

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlords effective January 31, 2011. The tenant must be served with the Order of Possession. If the tenant does not vacate the rental unit by the effective date of the Order of Possession, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The balance of the tenant's application is hereby adjourned to a date to be fixed by the Residential Tenancy Branch.

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 20, 2011.

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Residential Tenancy Branch