



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      OPC, OPB, MT, CNC, OLC, RP, LRE, RR, FF

### Introduction

This hearing dealt with cross applications. The landlord applied for an Order of Possession for cause and breach of an agreement. The tenant applied to cancel a Notice to End Tenancy and more time to dispute the Notice. The tenant also applied for Orders for compliance and repairs by the landlord, for conditions to be set upon the landlord's right to enter the unit, and authorization for a rent reduction.

The tenant appeared at the hearing approximately 12 minutes after it commenced. The tenant was informed of the pertinent information I had heard up to that point and provided an opportunity to respond.

### Issue(s) to be Decided

1. Is there a basis to grant the tenant more time to dispute the Notice to End Tenancy?
2. Should the Notice to End Tenancy be upheld or cancelled?
3. Is the landlord entitled to an Order of Possession?
4. Is it necessary to issue orders to the landlord for compliance, repairs, or to set conditions upon the landlord's right to enter the rental unit?
5. Has the tenant established an entitlement to a rent reduction?

### Background and Evidence

On January 1, 2011 the tenant was personally served with a 1 Month Notice to End Tenancy for Cause with an effective date of January 31, 2011. The tenant filed to dispute the Notice on January 30, 2011. The tenant testified that she waited more than 10 days to dispute the Notice as she was gathering evidence in support of her application.

The tenant's request for more time to dispute the Notice was denied. The landlord's request for an Order of Possession was granted. As the tenancy is about to end I

determined that the tenant's requests for Orders against the landlord for repairs and authorization for a rent reduction was no longer necessary.

I also heard the landlord has twice entered the rental unit; however, the landlord's witness claimed entry was made to respond to emergency repairs to the sewer pump and hot water tank located in the rental unit. The landlord was informed that until the landlord regains possession of the rental unit, the landlord's entry must comply with section 29 of the Act.

Both parties raised the issue of damages during the hearing. The tenant was informed of her obligation to ensure any damage she may have caused during the tenancy is repaired before the end of the tenancy. Both parties were informed of their mutual obligation to participate in a move-out inspection together in accordance with the Act and Residential Tenancy Regulations. Both parties were encouraged to contact the Residential Tenancy Branch if they have further questions about damages, inspection requirements and handling of the security deposit.

### Analysis

When a tenant receives a 1 Month Notice to End Tenancy for Cause, section 47 of the Act permits that a tenant may file to dispute the Notice within 10 days of receiving the Notice. When a tenant does not dispute a Notice within 10 days, the tenant is conclusively presumed to have accepted the Notice and will vacate the rental unit by the effective date of the Notice.

Under section 66 of the Act, the director may extend a time limit only in exceptional circumstances. I find the tenant did not present exceptional circumstances that would permit me to extend the 10 day time limit set by section 47 of the Act. Therefore, I denied the tenant's request for more time to dispute the Notice.

In light of the above finding, I find the tenant is conclusively presumed to have accepted the Notice to End Tenancy. The effective date appearing on the Notice is incorrect and it automatically changes to read February 28, 2011 in accordance with section 53 of the Act. Therefore, I find that this tenancy shall end February 28, 2011 and I grant the landlord's request for an Order of Possession effective February 28, 2011.

The landlord must serve the Order of Possession upon the tenant and may enforce it in The Supreme Court of British Columbia as an Order of that Court.

I award the filing fee to the landlord. The landlord is authorized to deduct \$50.00 from the tenant's security deposit in satisfaction of this award.

I do not find sufficient evidence that the landlord violated the landlord's restricted right to enter the rental unit; however, with this decision I provide both parties with a reproduction of section 29 of the Act for their future reference. The landlord is now considered fully aware of the limitations for entering the rental unit and must comply with this section of the Act until such time possession of the rental unit is regained.

### **Landlord's right to enter rental unit restricted**

**29** (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

Conclusion

The tenant's application has been dismissed. The landlord's request for an Order of Possession has been granted. The Order of Possession is effective at 1:00 p.m. on February 28, 2011. I make no orders against the landlord; however, the landlord has been made aware of section 29 of the Act by way of this decision and compliance with section 29 is required. The landlord is authorized deduct \$50.00 from the tenant's security deposit to recover the filing fee paid for this application.

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: February 15, 2011.

---

Residential Tenancy Branch