

## **DECISION**

Dispute Codes      CNC, MNDC, OLC, ERP, RP, PSF, AAT, LAT, RR, FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause pursuant to section 47;
- a monetary order of \$101.64 for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- an order to be allowed to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70; and
- an order authorizing the tenant to change the locks in the rental unit; and
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The parties agreed that the landlord handed the tenant a One Month Notice to End Tenancy for Cause on February 21, 2011 and the tenant handed the landlord a copy of her dispute resolution hearing package on February 23, 2011. I am satisfied that these documents were served to one another in accordance with the *Act*.

At the hearing, the landlord made an oral request for an Order of Possession if the tenant's application to cancel the Notice to End Tenancy for Cause were dismissed.

### Preliminary Matters

At the commencement of the hearing, I considered the tenant's March 4, 2011 letter requesting permission to revise her dispute resolution application. In that letter, the tenant asked to increase the amount of her application for a monetary Order from \$101.64 to \$8,354.93. The landlord confirmed having received the tenant's letter on March 4, 2011.

Rule 2.5 of the Residential Tenancy Branch Rules of Procedure addresses requests to amend an application for dispute resolution in the following terms:

**2.5 Amending an application before the dispute resolution proceeding**

*The applicant may amend the application without consent if the dispute resolution proceeding has not yet been commenced...*

*If the application has been served, and all requirements can be met to serve each respondent with an amended copy at least (7) days before the dispute resolution proceeding, the applicant may be permitted to file a revised application with the Residential Tenancy Branch. A copy of the revised application must be served on each respondent at least five (5) days before the scheduled date for dispute resolution proceeding.*

At the hearing, I noted that the tenant had not submitted an amended application for dispute resolution, nor was her request made at least seven days before this hearing. As the tenant had not provided sufficient notice to the landlord or the Residential Tenancy Branch of her intention to increase her request for a monetary award, I did not approve her request to amend her February 22, 2011 application for dispute resolution. To do otherwise would have been contrary to the rules of natural justice as the landlord has a right to know the issue before him so as to enable him to prepare for a hearing of this type.

Although it did not become necessary to call any witnesses, six people called into the hearing to provide evidence as witnesses for the landlord and three people called to offer evidence as witnesses for the tenant.

Issues(s) to be Decided

Should the tenant's application to cancel the landlord's One Month Notice to End Tenancy for Cause be approved? Is the tenant entitled to a monetary award? Should any Orders be issued to the landlord? Should the tenant's rent be reduced for repairs,

services or facilities agreed upon but not provided? Is the landlord entitled to an Order of Possession?

### Background and Evidence

This periodic tenancy for a lower level rental unit commenced on December 15, 2010. Monthly rent is set at \$1,000.00, payable on the first of the month. According to the tenancy agreement, the tenant is responsible for one-half of the hydro and heating costs for this two unit residential property. The landlord continues to hold the tenant's \$500.00 security deposit paid on December 1, 2010.

In her oral and written evidence, the tenant explained that she did not believe she should be held responsible for one-half of the hydro and heating costs for this property. She said that her request for a monetary award of \$101.64 reflected her desire to change the terms of her tenancy agreement to enable her to be held responsible for one-third of the hydro and heating costs for this property. She said that she finds her rental unit excessively cold and maintained that the landlord has not taken proper measures to address her concerns about the poor heating in her rental unit.

The landlord entered into written evidence a copy of his February 21, 2011 One Month Notice to End Tenancy for Cause. In that Notice, requiring the tenant to end this tenancy by March 31, 2011, the landlord cited the following reasons for the issuance of the Notice:

*Tenant or a person permitted on the property by the tenant has:*

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*

*Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

The alleged breach of a material term of the tenancy related to the tenant keeping a second cat in the rental unit, in contravention of her tenancy agreement which restricted her to a single cat. The tenant gave sworn testimony that she complied with the landlord's written notice to remove the second cat from her rental unit on February 20, 2011. The landlord testified that he had no direct knowledge to contradict the tenant's testimony that she no longer had the second cat living in her rental unit.

### Analysis

Pursuant to section 63 of the *Act*, the dispute resolution officer may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order.

During this hearing, the parties engaged in considerable discussion of the issues in dispute, turned their minds to compromise and reached an agreement to settle the issues before me. Both parties agreed to the following terms of the settlement of the tenant's application for dispute resolution:

1. The tenant will vacate the rental premises and end this tenancy by one o'clock in the afternoon on April 30, 2011.
2. The landlord committed to provide proper 24-hour written notice to the tenant whenever access to the tenant's rental unit is required during the remainder of this tenancy. The landlord committed to include on any such 24-hour written notice the purpose of his attendance at the rental unit and the time when access to the rental unit is required. Both parties committed to attempt to obtain their own third party witnesses for any visits to the rental unit required by the landlord.
3. The landlord committed to have the tenant's fireplace chimney cleaned by March 15, 2011. The landlord committed to provide the tenant with at least 24 hours written notice for this cleaning.
4. The landlord agreed to allow the tenant access to the carport parking location for her vehicle 24 hours per day.
5. Both parties agreed to leave one another's mail in the mailbox for this property.
6. Both parties committed to respect one another's right to the quiet enjoyment of their respective accommodations throughout the remainder of this tenancy.
7. The landlord committed to not file an application for dispute resolution to seek a monetary Order for recovery of damages from the tenant for any mould in the rental unit, for the counter in the kitchen, for two missing doors, for a stain and scuff marks on the kitchen floor, for missing screens in windows and for black burn marks on bricks in the tenant's fireplace, all of which the tenant maintains occurred prior to the commencement of her tenancy.

These particulars comprise the full and final settlement of the matters in dispute in the tenant's application.

### Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue the attached Order of Possession to be used by the landlord if the tenant does not vacate the rental premises in accordance with their agreement. Should

the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of 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*.