



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

Landlord: OPC, MND, MNDC, FF

Tenant: CNC, MNDC, OLC, ERP, RP, RR, FF

### **Introduction**

This hearing was convened by way of conference call in response to applications filed by the landlord and by the tenant. The landlord has applied for an Order of Possession for cause; a monetary order for damage to the unit, site or property; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application. The tenant has applied for an order cancelling a notice to end tenancy for cause; 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; for an order that the landlord make emergency repairs for health or safety reasons; for an order that the landlord make repairs to the unit, site or property; for an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlord for the cost of this application.

The parties both attended the conference call hearing, and the landlord was accompanied by an advocate who assisted the landlord with the process of the hearing.

Prior to hearing any affirmed testimony, the parties were informed that the landlord's application for an Order of Possession for cause and the tenant's application for an order cancelling a notice to end tenancy for cause were not related to the balance of the relief claimed by the parties, and accordingly the balance of the relief claimed would be severed from this hearing and adjourned to a new date to be fixed by the Residential Tenancy Branch. The hearing today would focus on the notice to end tenancy and the tenant's application to cancel the notice.

The tenant objected to severing and adjourning the balance of the relief and argued that the tenant should not be required to wait 4 months to have those matters dealt with. I reminded the tenant that the Tenant's Application for Dispute Resolution was filed on September 12, 2011 and evidence before me is that the parties had appeared before a Dispute Resolution Officer on August 18, 2011. Therefore, I find that the tenant is not

and has not been prejudiced by the adjournment. The tenant became very interruptive and argumentative and refused to take instruction. The tenant was read Rule 8.7 of the Residential Tenancy Branch Rules of Procedure, which states as follows:

**8.7 Interruptions and inappropriate behaviour at the dispute resolution proceeding**

Disrupting the other party's presentation with questions or comments will not be permitted. The Dispute Resolution Officer may give directions to a party, to a party's agent or representative, a witness, or any other person in attendance at a dispute resolution proceeding who presents rude, antagonistic or inappropriate behaviour. A person who does not comply with the Dispute Resolution Officer's direction may be excluded from the dispute resolution proceeding and the Dispute Resolution Officer may proceed with the dispute resolution proceeding in the absence of the excluded party."

The tenant continued to interrupt and then disconnected from the conference call hearing. The hearing then continued in the absence of the tenant. The evidence of the landlord was taken under oath, and the evidence provided by the parties as well as the testimony of the landlord have been reviewed and are considered in this Decision.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for cause?

Is the tenant entitled to an order cancelling a notice to end tenancy for cause?

Background and Evidence

The landlord testified that this month-to-month tenancy began on May 1, 2011 and the tenant still resides in the rental unit. Rent in the amount of \$1,800.00 per month is payable in advance on last day of the month for the next month, and there are no rental arrears. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$900.00. A copy of the tenancy agreement was provided in advance of the hearing.

The landlord also testified that the tenant has been repeatedly late paying the rent. Rent for the month of July, 2011 was received on July 7, 2011; rent for August was received on August 6, 2011; rent for September was received on September 8, 2011. October's rent was paid on time. All rent is paid by cheque, and the tenant mails each cheque individually to the landlord by regular mail.

The landlord also testified that a hearing was conducted by a Dispute Resolution Officer on August 18, 2011. During the course of that hearing, the parties had agreed to meet on August 23, 2011 to discuss repairs required in the rental unit, and to start repairs on that date. A copy of that Decision was also provided in advance of this hearing. That hearing was convened in response to the tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement; that the landlord make emergency repairs for health or safety reasons; for an order that the landlord make repairs to the unit, site or property; and for a monetary order. The Decision also states that: "The Tenant has not made a formal application for a monetary order in the body of her application for dispute, but is clearly included in her details of dispute. A monetary order request is included as part of the Tenant's application for loss of quiet enjoyment and compensation for a new tire." The Decision of the Dispute Resolution Officer as a result of that hearing provided the tenant with a monetary order in the amount of \$175.00 for the landlord's delay in dealing with repair issues. The tenant's application for a monetary order for loss of quiet enjoyment and the tenant's application for compensation for a new tire were dismissed.

The landlord also testified that the parties met on August 23, 2011 as agreed, and went through the list of repairs provided by the tenant. Later that day, the tenant emailed the landlord setting out dates that were convenient to the tenant for such repairs to be made. Those dates were August 27, 2011 between 8:00 a.m. and 10:00 a.m.; August 29 and 30; August 31, 2011 between 8:00 a.m. and 11:00 a.m.; and September 6, 2011. The landlord had to work on August 27, 2011, so was not able to attend on that date and advised the tenant. The landlord emailed the tenant asking if the landlord could attend on August 28, 2011 to clean up some broken glass and have an electrician attend at 10:00 a.m. The tenant agreed.

When the landlord and the landlord's father attended on August 28, 2011, the tenant took photographs of them cleaning up broken glass around the shop area. The electrician attended at the rental unit at 10:00 a.m. The tenant then asked the electrician for his business license. The electrician responded that he does not carry his license with him. The tenant then told him to learn English or go back to India, yelled at him and he left without completing any work. The landlord was billed \$400.00 for the call-out. The electrician was to fix an outlet in the kitchen, fix 2 light switches, and a light in a closet. The electrician will not return to do work in the rental unit because of the tenant's abusive behaviour.

The landlord further testified that the landlord's father sealed holes under the cabinets where plumbing is located; he cut wood to the exact size and screwed all 4 corners into

place. He also replaced a vent cover in the bathroom. The landlord also bought a space heater for a bedroom at the request of the tenant, but the tenant refused it stating that an oil based heater was preferred. The landlord advised the tenant that the house doesn't have gas or oil, and the tenant didn't want propane, so the landlord returned the heater. The tenant stated to the landlord that the landlord ought to have asked what brand the landlord should buy, yelled at the landlord and threatened to call police. The landlord did not attend at the rental unit on August 29 or August 30; and the tenant went on vacation on August 31, 2011.

The landlord further testified that the rental unit is currently for sale, but the realtor told the landlord that the tenant would not permit the realtor to take photographs even though the parties agreed on the date and time. The tenant refused the realtor entry when he arrived unless he provided "written documentation." Neither the landlord nor the realtor knows what written documentation the tenant expected. The landlord also stated that an assessment of what exact repairs are required cannot be done, and that has put the property at risk. Further, the shrubs and other plants are over-grown; the tenant has not kept the yard maintained, and hasn't cut the grass.

The landlord served the tenant with a 1 Month Notice to End Tenancy for Cause on September 2, 2011 by posting the notice to the door of the rental unit on that date. The landlord testified that the notice contained an earlier effective date than permitted under the *Act*. The tenant disputed the notice by filing a Tenant's Application for Dispute Resolution on September 12, 2011.

On September 24, 2011 the landlord served the tenant with another 1 Month Notice to End Tenancy for Cause by posting it to the door of the rental unit on September 24, 2011. A copy of the notice was provided in advance of the hearing, and it is dated September 24, 2011 and contains an expected date of vacancy of October 31, 2011. The notice states that:

- "Tenant is repeatedly late paying rent;"
- "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,
  - put the landlord's property at significant risk;"
- "Tenant has not done required repairs of damage to the unit/site or property."

The tenant has not disputed the notice but relies on the Tenant's Application for Dispute Resolution filed on September 12, 2011 as the dispute for the notice issued on September 24, 2011.

The landlord did not elaborate on any damage caused by the tenant because damages and repairs were severed from this hearing. The landlord stated that the tenant has put the landlord's property at significant risk by refusing entry to deal with the electrical repairs, and by refusing the landlord's entry to complete an assessment of repairs required.

### Analysis

The *Residential Tenancy Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the *Act*, regulations or the tenancy agreement. I accept the evidence of the landlord that the tenant pays rent by mailing individual cheques to the landlord by regular mail, and that those payments are not received by the landlord the day rent is due. The landlord testified to 3 late payments, in July, August and September, 2011. The tenant paid rent for October to the landlord by the first of the month, but the onus is on the tenant to ensure that the landlord receives rent the day it is due every month. Further, I refer to Residential Tenancy Policy Guideline 38 – Repeated Late Payment of Rent, which states that, "Three late payments are the minimum number sufficient to justify a notice under these provisions. It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be 'repeatedly' late." In this case, I find that the late payments are not far apart, and the landlord has proven 3 late rent payments in a 3 month period.

I also accept the evidence of the landlord that the tenant has put the property at significant risk by refusing the landlord and trades persons entry into the rental unit. The parties had agreed to meet on August 23, 2011 to discuss repairs required, which they did. The evidence before me is that the parties also agreed to have an electrician on site to conduct some repairs, but the tenant refused to allow entry for the electrician to assess what work was required and to conduct the repairs. The evidence before me is that the tenant has caused the landlord to pay an electrician \$400.00 and then refused the electrician entry.

The tenant filed for dispute resolution on September 12, 2011 for an order cancelling a notice to end tenancy given by the landlord on September 2, 2011. The landlord served the tenant with a second notice to end tenancy, which has not been disputed by the tenant. The *Residential Tenancy Act* also states that a tenant may dispute a notice by making an application for dispute resolution within 10 days after the date the tenant receives the notice. In this case, I find that the tenant is deemed to have received the notice 3 days after it was posted to the door of the rental unit, which the landlord testified was done on September 24, 2011. The tenant did not dispute that notice within 10 days as required under the Act, and is therefore conclusively presumed to have accepted that the tenancy ends on the effective date of the notice.

I further find that the notice to end tenancy dated September 24, 2011 which was provided to the tenant by the landlord is in compliance with the *Act*.

### Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord effective October 31, 2011 at 1:00 p.m. The tenant must be served with the Order of Possession. If the tenant is served with the order and fails to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I direct the parties to appear before me by way of conference call on a date and time to be set by the Residential Tenancy Branch for a hearing on the balance of the relief sought by the parties. A notice of the hearing will be sent to each of the parties 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: October 18, 2011.

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Residential Tenancy Branch