



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, MNSD

### Introduction

This matter proceeded by way of a conference call hearing, pursuant to the *Residential Tenancy Act* (the “Act”), and dealt with an Application for Dispute Resolution by the Tenant requesting that a One Month Notice to End Tenancy be cancelled and for a monetary order for the security deposit.

Both parties appeared, gave affirmed testimony and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Issue(s) to be Decided

Should the One Month Notice to End Tenancy be cancelled?

Is the Tenant entitled to receive a monetary order for his security deposit at this time?

### Background and Evidence

The parties confirmed that they do not have a written tenancy agreement, however they agree that the tenancy commenced on September 01, 2010. The parties agree that a security of \$300.00 was paid when the tenancy commenced. The parties agree that the rent is currently \$550.00 per month. The Tenant still resides in the rental unit at this time.

The Tenant stated that he thought the Act required rent to be paid by the first of the month, however, he stated that he does pay his rent before the first of the month based on when he received his disability cheque from the Ministry of Social Development. The Tenant stated that his disability cheque is issued by the Ministry of Social Development on the last Wednesday of each month and sent to him and then he issues payment to the Landlord immediately after receiving it.

The Landlord stated that the rent is due within one week of the Tenant’s disability cheque. The Tenant indicated that he does not dispute this. The parties agree that the

disability cheque is issued on the last Wednesday of each month and that the rent is due within one week of that date.

The Tenant confirms that he received a One Month Notice to End Tenancy for Cause by registered mail on December 06, 2011 and that the Notice was issued by the Landlord on December 02, 2011. The reasons listed on page two of the Notice served on the Tenant state that the Notice was issued because the "Tenant is repeatedly late paying rent; The Tenant has put the landlord's property at significant risk; and the Tenant has engaged in illegal activity that has or is likely to damage the landlord's property." The Tenant filed an Application to dispute the Notice within the time frames required by the Act.

The Landlord stated that the Notice was issued because she feels the Tenant has been late with rent. The Landlord stated that in either August or September 2011 the Tenant withheld rent as she had not fixed a washing machine in the rental unit. The Landlord stated that she had to drive three hours from her residence to pick up the rent cheque from the Tenant. The Landlord stated that there have been other occasions where the rent was late, however, she stated she is not sure of the dates.

The Tenant stated that he withheld rent on one occasion as the Landlord was not getting the washing machine fixed, however, he provided the rent cheque to the Landlord at her request. The Tenant stated that he wanted to move out but has not found a new place, so he remained in the rental unit even though the washing machine is still not fixed. The Tenant stated that he has not been late with the rent except on the one occasion, with regards to the washing machine repair request.

The Landlord stated that she is trying to sell the rental unit, however her realtor is finding it difficult to show the rental unit as the Tenant is not letting her in when she needs to get in and the realtor has complained to her that the rental unit does not smell good and it is not as clean as the realtor needs it to be to show the house. The Landlord confirmed that she has not conducted any inspections of the rental unit as she does not live in the same town, and she also confirmed that she has not provided the Tenant 24 hour advance written notice of any need to enter the rental unit for the realtor or otherwise. The Landlord also confirmed that no move-in condition inspection was done of the rental unit.

The Tenant confirmed that he understands that the Landlord has to provide him advance written notice if she requires entry to the rental unit, and stated that he disagrees with the Landlord's position about the cleanliness of the rental unit. The Tenant stated that the Landlord has not come to the rental unit to look at it herself.

The Landlord stated that the Tenant has illegally installed a cable satellite at the rental unit and spliced and ran cables inside her house illegally without clearing it with the cable company and a professional cable installer.

The Tenant stated that he pays for the cable as it is not included in the rent. The Tenant stated that he contacted his local cable provider, S. Cable, and was guided by their professional cable installer by phone on how to install and run the cable for the satellite dish. The Tenant stated that he has not drilled any holes in the rental unit and that he has run the cable up through the roof vent and down through the attic access door into his son's room. The Tenant stated that neither the Landlord nor the cable provider have attended the rental unit to check on the cable.

The Landlord is requesting an order of possession and states that her reasons amount to cause to end the tenancy.

The Tenant wants his tenancy to continue and the Notice to be cancelled.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the parties' evidence that the Tenant was sent the One Month Notice to End Tenancy by registered mail on December 02, 2011, and that he received it on December 06, 2011. However, I find that the One Month Notice to End Tenancy for Cause was not issued in accordance with the Residential Tenancy Act (the "Act") and Policy Guideline. The reasons listed on the Notice have not been proven by the Landlord. The Landlord has failed to prove that the Tenant has breached the Act, Regulation, or tenancy agreement.

I do not find that the Tenant has repeatedly been late with payment of rent, but rather has only been late on one occasion where he was requesting that the Landlord fix the washer. I find that until the hearing the Tenant was not clear on when the Landlord expected the rent to be paid as the Landlord had not entered into a written tenancy agreement with the Tenant. I find that the parties now understand and agree that the rent is due within one week of the last Wednesday of each month.

I find that the Landlord has failed to provide proper written notice to the Tenant as required by section 29 of the Act to schedule access to the rental unit for herself or her real estate agent. I find that the Tenant has not unreasonably refused access at this time as the Landlord has not complied with section 29 of the Act.

The Landlord has failed to provide evidence to support her concern that the rental unit is not being kept in suitable condition or cleanliness. The Act does not require a Tenant to clean to a higher standard or the realtor's or Landlord's standard necessarily. Section 32 of the Act applies and the Tenant is simply required to maintain reasonable health, cleanliness and sanitary standards.

For the parties' reference, section 29 and 32 of the Act state:

**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).

**Landlord and tenant obligations to repair and maintain**

**32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
  - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.
- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

I find that the Landlord has failed to prove that the Tenant has put the Landlord's property at significant risk or engaged in illegal activity that has or is likely to damage the Landlord's property. The Landlord has not requested access to the rental unit as required by section 29 of the Act for herself or a professional cable contractor, to assess the satellite cable connection that may have been made by the Tenant. The Landlord has not provided a written assessment from a professional cable contractor who has examined the satellite cable connection at the rental unit. The Tenant has received no warning that he is required to remove the cable connection because it has been proven to be improperly done.

Based on the above-mentioned reasons, I order that the One Month Notice to End Tenancy, served on December 02, 2011, be cancelled.

I find that the Tenant's claim for the security deposit is premature as the tenancy has not ended at this time. I grant the Tenant leave to reapply for the security deposit after the tenancy ends if it is not dealt with in accordance with the Act by the Landlord.

During the course of the hearing, the Tenant and Landlord agreed to set a date to end the tenancy, and requested that I record their settlement agreement on this matter pursuant to section 63 of the Act:

1. The Tenant agrees to vacate the rental unit no later than 1:00 P.M. on February 01, 2012 and end the tenancy.
2. The Landlord is entitled to an order of possession on the rental unit effective 1:00 P.M. February 01, 2012 and the tenancy will end.

### Conclusion

I have granted the Tenant's request to cancel the One Month Notice to End Tenancy for Cause issued by the Landlord on December 02, 2011.

The Tenant's claim for return of the security deposit is premature as the tenancy has not ended at this time. The Tenant's request for the security deposit is dismissed with liberty to reapply. The Landlord must deal with the security deposit in accordance with the Act.

I grant the Landlord an order of possession, effective 1:00 P.M. February 01, 2012. If the Landlord serves the order of possession on the Tenant and the Tenant 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.

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: December 21, 2011.

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Residential Tenancy Branch