



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, RP, MNDC and FF

### Introduction

This hearing was convened on the tenant's application seeking to have set aside a Notice to End Tenancy for unpaid rent served in person on December 10, 2011 and setting an end of tenancy date of December 20, 2011. The tenant also sought a Monetary Order for loss or damage under the legislation or rental agreement, an order for repairs to the rental unit and recovery of the filing fee for this proceeding.

### Issue(s) to be Decided

This matter requires a decision on whether the Notice to End Tenancy should be upheld or set aside, whether the tenant is entitled to a monetary award as requested and whether an order for repairs to the rental unit is warranted.

### Background and Evidence

This tenancy began on September 1, 2009. Rent is \$750 per month, contested in the present application to have been lowered to \$700 per month, and the landlord holds a security deposit of \$375 paid on or about September 1, 2009..

During the hearing, the tenant submitted into evidence a Notice to End Tenancy for unpaid rent dated October 7, 2011 citing unpaid rent of \$700, a figure the landlord said was written in error and should have been \$750.

The tenant proposes that by serving the form with the error, the landlord had lowered his rent to \$700 per month. Therefore, the tenant concurred that he had paid only \$700

for each of October, November and December of 2011. The landlord stated that the tenant had paid only \$700 for September as well but the tenant said he had paid the full amount that month.

### Analysis

Section 14(2) of the *Act* provides that, "A tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment."

Accordingly, I find that there was no agreement by the landlord to lower the rent. The error in the October Notice to End Tenancy does not constitute agreement to lower the rent, as neither would an error stating a higher rent could create an increase.

Section 26 of the *Act* provides that tenants must pay rent when it is due.

Section 46 of the *Act* provides that a landlord may issue a Notice to End Tenancy for unpaid rent on a day after the rent is due. The tenant may cancel the notice by paying the overdue rent or make application to dispute the notice within five days of receiving it.

In this instance, I find that the tenant did make application to contest the notice but that he did not pay the rent within five days of receiving it.

Therefore, I found that the Notice to End Tenancy of December 10, 2011 is lawful and valid and I could not set it aside.

On hearing that determination, the landlord requested, and I find he is entitled to, an Order of Possession under section 55(1) of the *Act* to take effect on December 31, 2011. Section 55(1) compels the issuance of the order on the landlord's request when a tenant's application to set aside a notice to end for unpaid rent is dismissed and/or the notice is upheld.

As the tenant's request for monetary compensation arose from a request for return of \$50 per month for the two years preceding what he interpreted, in error, as a declaration of lowered rent, that part of the application is also dismissed.

Similarly, as the end of the tenancy is imminent, the tenant's request for repairs is dismissed as moot.

The tenant concluded his participation in the hearing with expressions of profanity.

Conclusion

The Notice to End Tenancy of December 10, 2011 is upheld and the landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect at 1 p.m. on December 31, 2011.

The landlord remains at liberty to make application for a Monetary Order for the unpaid rent and any further damage or losses as may be ascertained at the conclusion of the tenancy.

The security deposit remains to be addressed in compliance with section 38 of the *Act*.

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