



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution made by the Tenant to cancel a 10 day Notice to End Tenancy for unpaid rent and to recover the filing fee for the Application.

The Tenant appeared, gave affirmed testimony and was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The Tenant was represented by a lawyer at the hearing and had one witness (L.T.) appear and give affirmed testimony.

The Tenant testified she served the Respondent with her Application and the Notice of Hearing by registered mail, sent on November 30, 2011. Under the Act, registered mail is deemed served five days later. Despite this, the Respondent did not appear at the hearing. I find the Respondent has been duly served in accordance with the Act.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

Should the 10 day Notice to End Tenancy for unpaid rent be cancelled?

### Background and Evidence

The Tenant received a 10 day Notice to End Tenancy for unpaid rent in the amount of \$41,600.00, dated November 24, 2011, with the Respondent's name indicated as the "landlord" (the "Notice").

According to the testimony of the Tenant, in early November of 2011, she received a letter from the Respondent demanding rent of \$650.00 a month retroactive to August 1, 2006, an amount of approximately \$41,600.00.

L.T., a witness who appeared for the Tenant, testified she is the actual landlord of the Tenant and has received all the rent for the rental unit. L.T. testified that no rent is owed under the tenancy agreement with the Tenant.

L.T. further testified she is the daughter of the Tenant, and has collected rents and performed the duties of a landlord under the Act with regard to the Tenant since the tenancy began. For example, she receives the rent on behalf of her Tenant from a government ministry.

L.T. testified there is a dispute involving the Respondent over his legal interest in the property where the rental unit is located. Apparently the Respondent is listed on title of the property and this dispute is before the Supreme Court of British Columbia.

L.T. alleges that the Respondent issued the Notice in an attempt to draw the Tenant into the litigation or to harass the Tenant.

### Analysis

Based on the above, the uncontradicted testimony and evidence, and on a balance of probabilities, I find that the Notice must be cancelled.

Despite whatever interest the Respondent may have in the property, I find that the Respondent is not the landlord of the Tenant as defined under the Act.

I find that the actual landlord for the Tenant is L.T., as she has an ownership interest in the property, has permitted occupation of the rental unit for several years, and exercises the powers and performs the duties of the landlord as defined under the Act.

The Respondent has provided no evidence to support the Notice or that they have acted as a landlord in this tenancy.

I find that the Respondent had no authority under the Act to issue any Notice to End the tenancy to the Tenant.

Therefore, **I order that the 10 day Notice to End Tenancy issued on November 24, 2011, is cancelled and is of no force or effect.** This tenancy will continue until ended in accordance with the Act.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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 15, 2011.

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Residential Tenancy Branch