



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

CNR, MNDC, OLC, LRE

### Introduction

This hearing was held in response to the tenant's Application for Dispute Resolution in which the tenant has applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, compensation for damage or loss, an Order the landlord comply with the Act and that limits be placed on the landlord's right to enter the rental unit.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

### Preliminary Matters

The landlord appointed an agent and the tenant was informed of this the night prior to the hearing. There was no submission made by the tenant in relation to the agent's legitimacy; the hearing proceeded. The status of an agent was explained to the tenant.

The landlord confirmed receipt of the tenant's initial application made on March 6, 2012, sent to the landlord via registered mail on that date.

The tenant then amended her application, increasing the amount of compensation she was seeking. The amended application was sent to the landlord via registered mail on March 12, 2012. The landlord received that mail on March 20, 2012.

The tenant requested an adjournment, as the hearing was scheduled quickly. The tenant indicated several matters of dispute on her application and confirmed that the main issue to deal with during this proceeding was the Notice to End Tenancy. For disputes to be combined on an application they must be related. Not all the claims on this application were sufficiently related to the main issue to be dealt with together. Therefore, I dealt with the tenant's request to set aside or cancel the Notice to End Tenancy for Cause and I dismissed the balance of the tenant's claim with liberty to re-

apply. Therefore, an adjournment was not required; as the monetary claim portion of the application is dismissed with leave to reapply.

The parties confirmed receipt of the evidence submitted by each, however; only the 2 Notices ending tenancy, the ledger showing rent payments and the tenancy agreement were considered. Upon my request, after the hearing, the landlord submitted a copy of the 10 Day Notice Ending Tenancy issued on March 8, 2012,

#### Issue(s) to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent issued on March 1, and March 6, 2012, be cancelled?

#### Background and Evidence

The current tenancy commenced on September 1, 2011; the terms of the tenancy agreement indicated that the tenancy was a fixed term and that it was month-to-month. The standard Residential Tenancy Branch agreement had been used. The tenant stated her understanding was that she had entered into a month-to-month tenancy.

The parties had a previous tenancy agreement that had commenced in 2010 and ended in August 2011.

Rent is currently \$925.00 per month, due on the first day of each month. The tenant confirmed she has not paid March, 2010, rent. The balance of rent that was included on the Notices is in dispute.

The tenant confirmed receipt of a "Termination Notice to Tenant" issued on March 1, 2012, for \$2,000.00 in unpaid rent. This Notice as issued on a form from 1984.

The landlord confirmed understanding that the tenant then disputed a 10 Day Notice Ending Tenancy for Unpaid Rent that was issued to the tenant on March 8, 2012 and received by the tenant on that date. The tenant testified that after receiving the 10 Day Notice she attended at the Residential Tenancy Branch office and indicated her intention to also dispute that Notice. Neither party submitted a copy of the 10 Day Notice.

During the hearing the form and content of the 10 Day Notice issued on March 8, 2012, was reviewed and confirmed. All required content was included; however, an effective vacancy date was not notated. The tenant testified she understood that once she received the Notice she was required to pay rent or vacate the unit on March 18, 2012; however, the tenant does not agree with the total amount of rent indicated on the Notice; she believes she owes \$1,200.00.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$2,165.00 within five days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

The landlord supplied a copy of a ledger recording rent payments made, dating back prior to the start of this tenancy.

During the hearing the landlord's agent stated that the landlord needs to place new occupants in the unit, that he cannot have the tenant remain in the unit when she is not paying rent.

### Analysis

I find that the "Termination Notice to Tenant" which the tenant initially disputed is of no force or effect. That Notice was issued on a 1984 form; the sections of the Act referenced on that form no longer apply.

In relation to the 10 Day Notice Ending Tenancy for Unpaid Rent issued on March 8, 2012; section 68 of the Act provides:

### ***Director's orders: notice to end tenancy***

- 68** (1) *If a notice to end a tenancy does not comply with section 52 [form and content of notice to end tenancy], the director may amend the notice if satisfied that*
- (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and*
  - (b) in the circumstances, it is reasonable to amend the notice.*
- (2) *Without limiting section 62 (3) [director's authority respecting dispute resolution proceedings], the director may, in accordance with this Act,*
- (a) order that a tenancy ends on a date other than the effective date shown on the notice to end the tenancy, or*
  - (b) set aside or amend a notice given under this Act that does not comply with the Act.*

As the tenant has confirmed her understanding of the Notice issued on March 8, 2010; that it required her to pay rent or vacate within 10 days, I find it is reasonable to amend the Notice to include an effective vacancy date of March 18, 2012.

The tenant is disputing the amount of rent owed, but has confirmed she has not paid March, 2012, rent in the sum of \$925.00. I have not considered the balance of rent indicated on the Notice as invalidating the Notice, as the tenant has acknowledged she failed to pay March rent owed. I find that despite the tenant's submission that the

amount of rent was inaccurate; the Notice does reflect unpaid rent for March, 2012. The tenant testified that she owes the landlord \$1,200.00; however, no finding was made in relation to the rent that may be owed, outside of March, 2012, in the sum of \$925.00.

Section 46 of the Act stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. The tenant did dispute the Notice and has not paid March, 2012, rent; therefore; pursuant to section 46(5) of the Act, I find that the tenant accepted that the tenancy has ended.

As the landlord's agent stated that the landlord wishes to place new occupants in the rental unit, I find this is the equivalent of requesting possession of the unit. Therefore, as the tenant's application is dismissed, pursuant to section 55(1) of the Act, I will grant the landlord an Order of Possession that is effective two days after the order is served to the tenant.

### Conclusion

The tenant's application to cancel a Notice ending tenancy for unpaid rent issued on March 8, 2012, is dismissed.

The landlord has been granted an Order of Possession that is effective 2 days after service to the tenant. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

The Notice issued on March 1, 2012, is of no force or effect.

The balance of the tenant's application was severed and the tenant has leave to reapply.

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: March 23, 2012.

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Residential Tenancy Branch