



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, OLC, ERP, RP, PSF, FF

### Introduction

This conference call hearing was convened in response to the tenant's application for cancellation of a 10 Day Notice to End Tenancy; to order the landlord to comply with the Act, regulation, or tenancy agreement, to make emergency repairs for health or safety reasons, to make repairs to the rental unit, and to provide services or facilities required by law; and to recover the filing fees associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Should the notice to end tenancy be set aside, and should the tenancy continue?

Should the landlord be issued orders under the Act as requested?

Is the tenant entitled to recover the filing fee?

### Background and Evidence

The rental unit consists of an apartment in a multi-unit complex. Pursuant to a written agreement, the month to month tenancy started in September 2009. The rent is \$750.00 per month and the tenant paid a security deposit of \$375.00.

The landlord testified that he received the tenant's rent cheque for March 2012, but that it had been stolen from the company's office. The parties did not dispute that as a result, an acting landlord and the property manager met at the tenant's suite to ask the tenant to issue a new cheque for that month and that the landlord would cover any related banking administrative costs. The tenant stated that he asked them to put this in writing. The property manager argued that the tenant agreed and asked for a couple days to write a new cheque. The property manager stated that he waited 2 weeks, and that by that time the tenant paid the rent for the month of April. The property manager stated that he told the tenant that the cheque would be applied for March and that he continues to owe rent for April. The property manager said that he waited a few more days and that since he did not receive another cheque he issued a 10 Day Notice to End Tenancy on April 6<sup>th</sup>, 2012. The tenant maintained that the landlord refused to provide anything in writing concerning the stolen cheque.

At the hearing, the tenant could not confirm whether he verified his bank statement to confirm whether the original rent cheque had been negotiated. He stated that as far as he was concerned he gave the landlord a cheque and that he does so every month.

In his documentary evidence, the tenant provided copies of receipts for rent paid in February, March, and April 2012.

Concerning the condition of the unit, the tenant provided 6 photographs showing mould build-up around single pane windows and a sliding door; water stains on the linoleum surrounding the base of the toilet; and gouges around the latch of a sliding door. The tenant also provided a copy of a handwritten 30 day notice requesting that the landlord attend to the following:

- A broken front door.
- Mould, water build-up, and a leaky toilet.
- Porch wood very soft.
- Spray the suite to eliminate cockroaches.

The landlord acknowledged that the building is in need of repairs, and that roof repairs have already started.

### Analysis

Section 26(1) of the *Act* specifies in part that a tenant must pay the rent when it is due under the tenancy agreement whether or not the landlord complies with the *Act*. The tenant was informed that his cheque for March was stolen and did not dispute the landlord's evidence in that regard. I find no basis under the *Act* requiring the landlord to provide a written request for unpaid rent under any circumstances, or allowing the tenant to withhold that rent unless the landlord complies with a written request. The tenant was provided a reasonable explanation with reasonable time to correct the problem; since the tenant did not cooperate, I find that the landlord had grounds to issue the notice to end tenancy.

Concerning the mould around the window and sliding door track, the tenant is responsible for cleaning the inside windows and tracks to prevent mould build-up, and to remove mould if it occurs. The tenant must ensure that reasonable household practices are followed to minimize the presence or accumulation of moisture or mould; I do not find that this responsibility belongs to the landlord.

With respect to the other issues, since I have determined that this tenancy ends by virtue of the 10 Day Notice to End Tenancy it is not necessary that I consider this aspect of the tenant's application.

At the hearing, the landlord confirmed that he sought an order of possession. Section 55(1) of the *Residential Tenancy Act* states:

*“If a tenant makes an application for dispute resolution to dispute a landlord’s notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

*(a) The landlord makes an oral request for an order of possession, and*

*(b) The director dismisses the tenant’s application or upholds the landlord’s notice.”*

Since the tenant’s application is dismissed, the landlord is entitled to an order of possession.

### Conclusion

The tenant’s application is dismissed.

I grant the landlord an Order of Possession effective two days from the date the order is served upon the tenant.

This 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: April 25, 2012.

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Residential Tenancy Branch