



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

CNR; LRE; FF

### **Introduction**

This Hearing dealt with the Tenant's application cancel a *10 Day Notice to End Tenancy for Unpaid Rent or Utilities* (the Notice) issued April 10, 2012; for an Order suspending or setting conditions on the Landlord's right to enter the rental unit; and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony and had an opportunity to be heard and respond to other party's submissions.

### **Issue to be Decided**

- Should the Notice issued April 10, 2012, be cancelled?
- Should the Landlord's right to access the rental unit be suspended or should conditions for entry be placed on the Landlord?

### **Background and Evidence**

A large amount of documentary evidence and oral testimony was provided. I have recorded only the testimony that was relevant to the Tenant's application.

The Landlord posted the Notice to the Tenant's door on April 10, 2012. A copy of the Notice was provided in evidence.

The Tenant testified that he has provided the Landlord with post dated cheques and that he does not owe any rent to the Landlord.

The Landlord's agent stated that the Tenant owes \$61.60 in rent, after the Landlord applied \$61.60 of his April rent payment towards the cost of repairs for which the Tenant is responsible.

The Tenant disputed that he is responsible for paying the repair costs. He testified that the Landlord does not provide due notice when seeking to access the rental unit. He stated that the Landlord entered the rental unit without his knowledge or consent.

The Landlord's agent testified that they did not enter the rental unit without notice. She stated that they entered the suite below his, which was vacant at the time, and discovered a slow leak coming from the Tenant's hot water tank. She stated that it was not deemed to be an emergency at the time. The Landlord's agent stated that a card was left in the Tenant's door jamb, or a notice was left on the Tenant's door letting him know that the Landlord would be entering the suite the next day.

### **Analysis**

The Tenant pays rent by way of post dated cheque. The Landlord chose to proportion some of April's rent towards a disputed repair cost. I find that the Tenant does not owe rent for the month of April, 2012, and grant the Tenant's application to cancel the Notice to End Tenancy. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

Section 29 of the Act provides that a landlord may not enter a rental unit unless:

- the tenant gives permission;
- the landlord gives the tenant at least **24 hour notice that includes the reason for entry and the date and time (which must be between 8:00 a.m. and 9 p.m.);**
- for the purposes of housekeeping services if they are provided in the tenancy agreement;
- the landlord has an order of the director authorizing entry;
- the tenant has abandoned the rental unit; or
- there is an emergency which threatens life or property.

Section 90 of the Act deems service by way of **posting a document to a door is deemed to be effected three days after posting.**

Copies of Section 29 and 90 are attached to this Decision.

I decline to place any restrictions on the Landlord's right to access the rental unit, but the Landlord is hereby cautioned that it must comply with Section 29 of the Act when exercising that right.

The Tenant has been successful in his application to cancel the Notice and I find that he is entitled to recover the cost of the filing fee from the Landlord. Pursuant to the

provisions of Section 71 of the Act, the Tenant may deduct \$50.00 from future rent due to the Landlord.

**Conclusion**

The Notice to End Tenancy issued April 10, 2012, is cancelled. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

The Landlord is cautioned that it must comply with Section 29 of the Act when exercising its right to access the rental unit.

The Tenant may deduct **\$50.00** from future rent due to the Landlord.

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: May 14, 2012.

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Residential Tenancy Branch