



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

CNR; MNDC; 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 June 21, 2012; for compensation for damage or loss under the Act, regulation or tenancy agreement; 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.

It was established that the Landlord received the Notice of Hearing documents and copies of the Tenant's documentary evidence on June 26, 2012. The Landlord did not provide any documentary evidence to the Residential Tenancy Branch or to the Tenant.

### **Issue to be Decided**

- Should the Notice issued June 21, 2011, be cancelled?
- Is the Tenant entitled to compensation under the provisions of Section 67 of the Act?

### **Background and Evidence**

The rental unit is the basement suite of a house. The Landlord resides in the upper floor of the same house.

There was a Dispute Resolution Hearing held on June 21, 2012, which was scheduled to hear cross-applications. The Tenant had applied to cancel a notice to end the tenancy, compensation for damage or loss and an order allowing a reduction in rent. The Landlord had applied for an order of possession and a monetary order for unpaid rent. A copy of the Decision issued on June 27, 2012 was provided in evidence. In her Decision the Dispute Resolution Officer made the following findings and orders:

- She found that the notice to end the tenancy was invalid because the notice was a verbal notice which does not conform to the requirements of the Act;
- She found that the Landlord breached Section 32 of the Act;
- She ordered that the Landlord immediately repair or replace the damaged flooring in the rental unit;
- She found that the Tenant is entitled to compensation in the amount of \$250.00 per month retroactively for 24 months;
- She ordered that rent be reduced from \$500.00 to \$250.00 immediately, until the Landlord completes the work order; and
- She ordered the Landlord to reimburse the Tenant \$1,500.00 for rent paid in advance.

In her Decision dated June 27, 2012, the Dispute Resolution Officer noted that the Landlord, "was hesitant in responding to most questions and became more argumentative during the course of the hearing." She also wrote that, "the landlord attended the hearing; however he exited the telephone conference call hearing prior to its conclusion and did not return."

During the Hearing, the Tenant submitted that the Landlord issued the Notice one hour after the Hearing had concluded and that in doing so, the Landlord was harassing the Tenant. The Tenant stated that preparing for this Hearing took him away from his own business. He seeks a monetary order in the amount of \$595.00 to compensate him for his time and out of pocket expenses. The Tenant submitted in his documentary evidence, "As long as [the Landlord] feels he is impervious to the Residential Tenancy Act and to the laws governing residential rentals in general; he will continue to break the law, harass and attempt to evict tenants at will, and retaliate against them whenever they dare challenge his illegal behavior through the Dispute Resolution Process. [The Landlord] will not learn to adhere to the law unless he is sanctioned and ordered to pay damages for his actions."

The Landlord stated that he does not dispute that the Notice should be cancelled. He stated that he has applied for review of the June 27, 2012 Decision, but has not received the result from that application for review. He stated that he does not mean to harass the Tenant and that he, "didn't hang up. I was cut off." The Landlord stated that he will respect any decision that the Residential Tenancy Branch makes.

### **Analysis**

When a tenant seeks to cancel a notice to end tenancy, the onus is on the landlord to provide sufficient evidence that the tenancy should end for the reasons provided on the notice. In this case, the Landlord did not provide any evidence that the tenancy should

end because the Tenant owes \$300.00 in unpaid rent and \$90.00 in unpaid utilities, as the Notice provides. In fact, it is the Landlord who owes the Tenant \$1,500.00 pursuant to the Decision and Order dated June 27, 2012. Therefore, I find that the Notice is not a valid notice to end the tenancy and **the Tenant's application to cancel the Notice is granted**. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

There is no provision in the Act or regulation for compensation to either party for the cost of preparing for a Hearing. Therefore, **the Tenant's application for compensation is dismissed**. However, I hereby warn the Landlord with respect to the provisions of Sections 94 and 95 of the Act. A copy of those Sections is attached to this Decision. In particular, I draw the Landlord's attention to Sections 94.1 and 95(2) of the Act.

The Tenant has been successful in his application to cancel the Notice and therefore I find that he is entitled to recover the cost of the filing fee from the Landlord. Pursuant to the provisions of Section 72 of the Act, the Tenant may deduct **\$50.00** from future rent due to the Landlord. In the alternative, I hereby provide the Tenant a Monetary Order in the amount of \$50.00. I remind the parties of the directions of the Dispute Resolution Officer in her June 27 Decision:

I direct both parties to keep accurate records of payment made for rent, either through redemption of the monetary claim or direct payments. Should the tenancy end prior to the tenant being able to fully redeem his monetary claim by withholding of his monthly rent payments, the monetary order may be enforceable in the Provincial Court of British Columbia (Small Claims) for the balance due.

## **Conclusion**

**The Notice to End Tenancy issued June 27, 2012, is cancelled.** The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

**The Tenant may deduct \$50.00 from future rent due to the Landlord.** The Tenant is hereby provided a Monetary Order in the amount of \$50.00 should he be unable to redeem his monetary award by withholding rent. This Monetary Order is enforceable through the Provincial Court of British Columbia (Small Claims).

The Tenant's application for compensation under the Act, regulation or tenancy agreement is **dismissed**.

**The Landlord is cautioned with respect to the provisions of Sections 94.1 and 95(2) of the Act, copies of which are provided with this Decision.**

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: July 24, 2012.

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Residential Tenancy Branch