



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

CNR; MNDC; RR; FF

### **Introduction**

This Hearing was scheduled to hear the Tenant's application to cancel a *10 Day Notice to End Tenancy for Unpaid Rent* issued June 14, 2012 (the "Notice"); for compensation for damage or loss under the Act, regulation or tenancy agreement; to allow the tenancy to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing.

It was determined that the Tenant served the Landlord with the Notice of Hearing documents by registered mail, sent June 21, 2012.

Neither party provided any documentary evidence to each other or to the Residential Tenancy Branch prior to the Hearing.

### **Preliminary Matters**

The Tenant did not provide a copy of the notice to end tenancy that he seeks to cancel. Both parties indicated that they wished to proceed with the Hearing. As both parties had a copy of the Notice, I allowed the Landlord to fax me a copy of the Notice and the Hearing proceeded.

The Residential Tenancy Rules of Procedure, Rule 2.3, states that for disputes to be combined on an application they must be related. I find that that the monetary claim and request for a rent reduction are not sufficiently related to the main issue, which is to cancel the Notice. The Tenant indicated that he wished to proceed with his application to cancel the Notice and therefore I dismiss the Tenant's application for a Monetary Order and rent reduction **with leave to reapply**.

### **Background and Evidence**

Both parties spoke about a previous hearing with respect to this tenancy. A search of the Residential Tenancy Branch's electronic filing system indicates that on March 20, 2012, the Tenant filed an application for dispute resolution to cancel a notice to end

tenancy that he received on March 16, 2012 for \$1,150.00 in unpaid rent. The hearing took place on April 11, 2011, with no one appearing for the Landlord.

In her April 11, 2012 Decision, the dispute resolution officer made the following findings:

- “On the basis of the testimony of the Tenant and in the absence of evidence to the contrary, I find that an agent for the Landlord refused to accept the rent payment of \$875.00 that was offered to the Landlord on March 16, 2012.
- As the agent for the Landlord’s actions prevented the Tenant from paying the rent and thereby rendering the Notice to End Tenancy ineffective, I find that the Landlord cannot now rely on the Notice to End Tenancy that was served.”
- “I find that the Tenant did not pay the rent that was due on March 1, 2012, but that he had paid all of the rent that was due prior to this date.”

The Landlord’s agents testified that they have filed an Application for Review Consideration with respect to the April 11, 2012, Decision.

This tenancy began in October, 2011. The Landlord inherited the tenancy from the previous Landlord in February, 2012. Monthly rent is \$875.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$432.50 at the beginning of the tenancy. The Tenant stated that he has a copy of the tenancy agreement. The Landlord’s agents stated that they do not have a copy because the previous Landlord could not locate a copy in order to provide it to them. The Tenant testified that rent includes heat, hot water and electricity.

The Landlord’s agents testified that the Tenant’s rent cheque for February, 2012, was returned to them “NSF” because the account had been closed. They testified that they received partial payment for February, 2012 on February 21, 2012, but that the Tenant has paid no rent at all since February 21, 2012.

The Landlord’s agents testified that the Notice was posted to the Tenant’s door on June 14, 2012.

The Landlord’s agents testified that they have asked the Tenant to provide the Landlord with authority to withdraw preauthorized payment for rent, but the Tenant has not done so. The Landlord’s agents asked for an Order of Possession effective immediately.

The Tenant stated that he has paid rent in full for March, April, May and June, 2012, and that he has the receipts to prove it. He stated that he has not paid rent for July, 2012, yet because he had surgery in June and the Landlord’s agents have not come to the rental unit to pick up the rent. The Tenant testified that he paid June’s rent on June 12, 2012.

## **Analysis**

I find that the Tenant gave conflicting testimony during the Hearing. For example, in his Application for Dispute Resolution filed June 18, 2012, he writes in the *Details of Dispute* section, "...they will not come and get rent."

When I explained to the Tenant that the onus was on a tenant to pay the rent when it is due and not upon the Landlord to collect it from the Tenant, he stated that he did pay June's rent on June 12, 2012, which is 6 days before he filed his Application.

He also testified that he had receipts to prove that he has paid all of his rent up to June, 2012. However, when I asked him why he did not provide this proof of payment in evidence, he stated that he was injured and could not come to the Residential Tenancy Branch to drop it off. He stated he didn't know anyone who could deliver the documents to the branch for him. He did not explain why he did not file the documentary evidence when he filed his application, or why he didn't provide copies of his documentary evidence to the Landlord when he served them with the Notice of Hearing documents.

For these reasons, I prefer the testimony of the Landlord's agents with respect to whether or not rent has been paid for the month of June, 2012, and I dismiss the Tenants' application to cancel the Notice to End Tenancy.

The Landlord's agents asked about a monetary award and I explained to them that this was the Tenant's application and that I would make no order or findings with respect to a monetary award for the Landlord. The Landlord remains at liberty to file its own Application for Dispute Resolution.

The Tenant has not been successful in his application to cancel the Notice and I order that he bear the cost of the filing fee.

Section 55(1) of the Act states:

**55** (1) 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.

Pursuant to the provisions of Section 55(1) of the Act, I hereby grant an Order of Possession to the Landlord. Based on the testimony of the parties, I find that the Tenant is deemed to have received the Notice three days after it was posted to his door and that therefore the effective date of the end of the tenancy was June 27, 2012. I find that the Tenant is overholding and that the Landlord is entitled to an Order of Possession effective 2 days after service of the Order upon the Tenant.

### **Conclusion**

The Tenant's application to cancel the Notice to End Tenancy issued June 14, 2012, is dismissed without leave to re-apply.

I hereby provide the Landlord an Order of Possession **effective 2 days after service of the Order 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: July 11, 2012.

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Residential Tenancy Branch