



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

Landlords: OPR  
Tenant: CNR, MNDC and OPT

### Introduction

This hearing was convened on applications by both the landlord and the tenant.

By application of September 14, 2012, the landlord sought an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served by registered mail sent on August 29, 2012 and received on September 4, 2012. The landlord has not requested a Monetary Order

By application of September 28, 2012, the tenant sought to have the same Notice to End Tenancy set aside and an Order of Possession in favour of the tenant. The Tenant also sought a Monetary Order for loss or damage under the rental agreement or legislation.

As a preliminary matter, section 46 of the *Act* provides that a landlord may issue a notice to end tenancy for unpaid rent on any day after the day on which the rent is due. As is repeated on the Notice to End Tenancy, section 46 further provides that:

- (4) Within 5 days after receiving a notice under this section, the tenant may
  - (a) pay the overdue rent, in which case the notice has no effect, or
  - (b) dispute the notice by making an application for dispute resolution.

- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
  - (b) must vacate the rental unit to which the notice relates by that date.

Therefore, as the notice was effectively served on September 3, 2012 taking into account the five days for deemed service under section 90(a) of the *Act*, the effective date would have been September 13, 2012, which is automatically corrected from the September 7, 2012 end date stated on the notice by section 53 of the *Act*.

Therefore, the tenant's application was made approximately three weeks after receipt of the notice and 14 days after the effective date.

The *Act* makes provision at section 66 for the director to change a time limit "only in exceptional circumstances." The tenant has not selected the request for more time on the application.

Moreover, with the effective date of the notice set at September 14, 2012 and the tenant's application brought on September 28, 2012, two weeks later, the director loses authority to extend the time limit by section 66(3) of the *Act* which states that:

- 3) The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

Therefore, I must dismiss that portion of the tenant's application which seeks to have the Notice to End Tenancy set aside and issuance of an Order of Possession for the tenant.

#### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession? Is the tenant entitled to a Monetary Order?

#### Background and Evidence

This tenancy is somewhat confused as the parties are acquainted with one another outside of the tenancy and have had temporary tenancies each year since 2004. The rental unit is a lake front cabin, normally used by the sibling owners for various vacation periods during the summer months.

Each year, they have signed a new rental agreement for a fixed term tenancy agreement usually beginning on September 1, 2012 and ending on May 31<sup>st</sup> or June

30<sup>th</sup> with the option of continuing as a periodic tenancy depending on the landlord's family's needs to use it as a vacation residence for three or four family groups.

Rent is \$375 per month for the September to June period and is increased for the vacation period when the tenant has remained. The landlord and tenant have exchanged information regarding the fact that the rate is less than the cost of operating and maintaining the property and less than family members pay during vacation.

The parties have made some informal accommodations for one another over the years with the tenant sometimes overholding and overlapping with vacationing family, according to the landlord.

In the material period, the tenancy differed somewhat in that there was another party staying in the rental unit with the tenant as a tenant in common. His rental agreement set rent at \$375 per month and was for a fixed term to June 30, 2012 at which time the tenancy was end without option to proceed on a monthly basis. The tenant in common vacated accordingly.

The applicant tenant's rental agreement appears to be ambiguous on the face of it.

On the applicant tenant's rental agreement there is a check box on the month to month option and on the option to continue month to month at the end of the tenancy. However, the initial boxes required for the vacant possession election have been filled and the end of tenancy section states that the tenancy ends on June 30, 2012.

Each of the parties agreed that the initials in their respective boxes are authentic and the landlord stated that the change fully intended to correct the agreement to the fixed term with the tenancy ending.

The end date became an issue when the landlord attempted to impose the temporary summer rate on the tenant for a short continuation which was supposed to go to July 14, 2012, but the tenant failed to leave until July 17, 2012, causing some disruption in the landlord's family use. The tenant has not returned and the landlord currently has possession of the rental unit.

The tenant stated that the tenancy was month to month and, therefore, the landlord was bound by the 4.3 percent allowable annual rent increase. The tenant offered to sublet

the rental unit to the landlords for the customary vacation period, and subsequently instructed them that to end the tenancy, they would have to serve her with a two-month Notice to End Tenancy for landlord use.

The landlord was of the view that the tenancy had ended on June 30, 2012 and, if it was begun again, it was under a new rental agreement, the summer rent was at vacation lakefront rates, and the question of a rent increase did not pertain.

In discussion of the tenant's claim for a monetary award, the parties made reference to three trees that had been removed without the landlord's consent, a change of locks made without the landlord's consent, equivocation over whether the landlord would enter into a new fixed term tenancy beginning September 2012, the tenant's moving expenses and some disturbance of the tenant's property.

Whether intentional or not, I found some obfuscation in the tenant's reply to my questions. When I asked about the trees, she referred me to her lengthy written submissions (much of which was submitted late), then advised that I would have to ask someone else. I am left with some question as to how someone could fall, buck and remove three trees from the property without the tenant's knowledge.

Similarly, when I asked the tenant if she had changed the locks, she variously referred me to her written submissions, denied having done changed them, then made comment as to the need for repair or inadequacy of one.

The tenant had also stated that the landlord had gone through her personal belongings which the landlord stated they were required to do in order to properly document and photograph the remaining property.

### Analysis

On my dismissal of the tenant's claim to have the Notice to End Tenancy set aside as out of time, the landlord requested an Order of Possession. Section 55(1) of the *Act* compels the issuance of such order on the landlord's oral request when a tenant's application to set is dismissed or the notice is upheld.

Accordingly, as the tenant is not currently living in the rental unit, I find that the landlord is entitled to an Order of Possession effective at 1 p.m. on Sunday, October 14, 2012. I

cannot make the Order effective two days from service because the tenant has not provided the landlord with a forwarding address.

As to the tenants claim for a monetary award, I find no conduct that would constitute the claimed harassment in the landlord's efforts to reach an agreement with the tenant with respect to her vacating or renewing a rental agreement.

Similarly, I find the landlord was acting within her rights as a landlord to press for explanation with respect to the missing trees or unauthorized change of locks.

I find that, whichever version of the rental agreement is considered, there was a meeting of the minds on the issue that the tenancy was for a fixed term which ended on June 30, 2012 and events thereafter were under a new agreement.

This I base on the fact that there was no question that the tenant in common was to vacate on June 30, 2012, that the tenant had initialed the termination section of her rental agreement and had in fact written in the end date, established practice since 2004, and reference to the end date in two or three emails. I find that the proactive task of entering a date as the tenant did and initialing the section requiring her to vacate on that date outweighs the clerical failure to select the check box and delete the month to month reference.

I accept the landlord's submission that the clerical error resulted from the stress of a recent bereavement.

Having found that the tenancy ended lawfully, I find that the landlord bears no responsibility for the tenant's moving expenses.

Therefore, the monetary component of the tenant's application is dismissed without leave to reapply.

### Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect at 1 p.m. on October 14, 2012.

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: October 12, 2012.

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Residential Tenancy Branch