



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MT, CNR, ERP and FF

### Introduction

This hearing was convened on the tenant's application for more time to make application to contest a 10-Day Notice to End Tenancy received on October 8, 2012, to obtain an order for emergency repairs and to recover the filing fee for this proceeding from the landlords.

As the application included a request for emergency repairs and in view of no objection from the landlord, I granted the tenant's request for the time extension and heard the evidence of both parties.

As a matter of note, I have amended the style of cause to include the name of the third landlord as requested.

### Issue(s) to be Decided

Should the Notice to End Tenancy be upheld or set aside and does the evidence submitted warrant the issuance of an order for emergency repairs?

### Background and Evidence

This tenancy began on October 1, 2011. Rent is \$975 per month and the landlord holds a security deposit of \$487.50 paid at the beginning of the tenancy.

During the hearing, the landlord gave evidence that the Notice to End Tenancy of October 8, 2012 had been served after the tenant had a previous shortfall which remained unpaid and she had not paid the rent due on October 1, 2012.

In the interim, while the tenant did pay the previous shortfall, the October 2012 rent remains unpaid and the tenant has paid no rent for November 2012.

The tenant agreed that the rent had not been paid for the two months and made explanation that she had not paid because of ongoing remediation work in the rental unit as a result of water damage caused by failure of the hot water tank.

When the landlord offered to work with the tenant in arranging a repayment schedule to continue the tenancy, the tenant advised she had recently lost employment and could not reasonably expect to keep up with the rent and pay the arrears.

The landlord stated that the remediation work on the rental unit is nearing completion.

### Analysis

Section 26 of the *Act* provides that tenants must pay rent when it is due, “whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.”

Section 46 of the *Act* provides that a landlord may issue a Notice to End Tenancy for unpaid rent on a day after the rent is due. The tenant may cancel the notice by paying the overdue rent or make application to dispute the notice within five days of receiving it. In this instance, I find that the tenant did not pay the rent within five days of receiving the notice.

Therefore, I found that the Notice to End Tenancy of October 8, 2012 was lawful and valid and that I could not set it aside.

On hearing that determination, the landlord requested, and I find he is entitled to, an Order of Possession under section 55(1) of the *Act* which compels the issuance of the order on the landlord’s oral request when a tenant’s application is dismissed and the notice to end the tenancy is upheld.

Accordingly, I find that the landlord is entitled to an Order of Possession to take effect two days from service of it on the tenant.

As the tenancy is ending shortly, I find there is no need to consider the tenant’s request for repairs.

Conclusion

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 two days from service of it on the tenant.

As the end of the tenancy is imminent, the tenant's request for repairs is dismissed as moot.

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: November 21, 2012.

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Residential Tenancy Branch