



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

CNR, RR, PSF, CNL

### **Introduction**

This hearing was convened in response to an amended application by the tenant to:

- Cancel a 10 Day Notice to End (NTE) Tenancy for Unpaid Rent – Section 46,
- Cancel a 2 Month Notice to End for Landlord's Use – Section 49
- Provide services agreed upon but not provided – Section 65
- Reduce rent for services or facilities agreed but not provided – Section 65

Both parties attended the hearing and provided testimony. The tenant provided the pertinent Notices to End. The landlord was aided by their interpreter. At the outset of the hearing the landlord orally requested an Order of Possession as per the Act.

### **Issue(s) to be Decided**

Are the Notices to End Tenancy valid?

Is the landlord entitled to an Order of Possession?

Is the tenant entitled to the provision of services or facilities required by law?

Is the tenant entitled to a reduction of rent for services or facilities agreed upon but not provided?

### **Background and Evidence**

The parties' undisputed evidence is that the tenancy began on October 31, 2010. Rent in the amount of \$700.00 is payable in advance on the first day of each month. In July 2012 the landlord gave the tenant a 2 Month Notice to End with an effective date (automatically adjusted) of September 30, 2012. The tenant did not vacate or file to dispute the Notice to End within the required 15 days to do so. The tenant asked the landlord if they could stay given they had not found a new rental unit. The landlord allowed the tenant another month, but refused to take rent after October 2012, insisting they vacate so as to accommodate the landlord's use as intended by the 2 Month Notice. The landlord served the tenant with a Notice to End Tenancy for non-payment of rent on November 06, 2012 with an effective date of November 16, 2012. Therefore, the tenant determined to dispute the 10 Day Notice to End and further has not paid rent

for December 2012. The parties were apprised that the landlord is owed rent for November and December 2012 and that the tenant must pay the unpaid rent or the landlord can pursue its satisfaction via an application for dispute resolution.

The tenant further claims that the tenancy agreement includes laundry facilities, cable TV and a functioning stove. The tenant claims that since November 06, 2012 the landlord has removed laundry facilities. The landlord does not dispute the claim, as in their determination the tenancy had already ended, and they were only allowing the tenant to remain for compassionate reasons. The tenant further claims that for 10 months during the tenancy they did not receive cable TV service and notified the landlord to have the matter fixed, but they did not. The landlord denies having been notified of a problem. The tenant testified that the rental unit stove has not worked properly during the entire tenancy – only 2 burners working, and that they notified the landlord. The landlord denies having been notified of such a problem.

### **Analysis**

Based on the testimony of both parties, and on the preponderance of the evidence, I find that the tenant was served with a 2 Month Notice to End tenancy for landlord's Use and I find that notice to be valid. The tenant did not dispute that notice and did not vacate, and was allowed to remain due to the landlord's good will. As a result, the tenant's application to cancel the 2 Month Notice to End dated July 18, 2012 **is hereby dismissed** – the landlord's Notice is upheld. Section 55 of the Act, in part, states as follows: (**emphasis for ease**)

#### **Order of possession for the landlord**

- 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.

Based on the above facts I find that the landlord is entitled to an **Order of Possession**. The landlord elected for the Order to take effect no sooner than **December 31, 2012**.

The parties agreed that the tenant would pay the landlord all arrears of rent from October 01, 2012 to December 31, 2012, and that the landlord would accept any arrears offered by the tenant. The parties were advised that it is available to the landlord to file for dispute resolution for any unpaid rent.

As I have found that the tenancy is ending, I decline to consider the tenant's claims respecting provision of services or facilities required by law. I further find that I prefer the testimony of the tenant in respect to the lack of cable TV service and the improperly functioning stove. As a result I find the tenant is entitled to abatement of rent paid, which I set at a limit of **\$400.00**, without leave to reapply. As the tenant's rent is in arrears, I will order that the tenant may deduct this amount from the sum of rent arrears owed to the landlord for the period October 01 to December 31, 2012.

### **Conclusion**

**I grant** an Order of Possession to the landlord **effective December 31, 2012**. The landlord is being given this Order. The tenant must be served with this Order of Possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

**I Order** that the tenant may **deduct** a one-time amount of **\$400.00** from arrears of rent owed 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: December 12, 2012

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Residential Tenancy Branch