



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      ET

### Introduction

This hearing dealt with the landlord's application pursuant to section 56 of the *Residential Tenancy Act* (the *Act*) for an early end to this tenancy and an Order of Possession. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The tenant confirmed that he had received the landlord's dispute resolution hearing package sent by the landlord by registered mail on February 15, 2013. I am satisfied that the landlord served this package and his evidence to the tenant in accordance with the *Act*.

### Preliminary Issues

At the commencement of the hearing, the tenant noted that the landlord had reversed his names in his application for dispute resolution. With the agreement of both parties, I amended the order of the tenant's given names and surnames to the correct order as set out above.

During the hearing, the tenant testified that a decision had been issued by another Arbitrator appointed under the *Act* with respect to this tenancy on February 15, 2013. This decision addressed the tenant's application for repairs, an Order of Possession or an Order for the return of his goods as he is locked out of the rental unit and a Monetary Order for a rent rebate for being locked out and for losses due the lockout. The tenant referred to the following final and binding Orders issued by the other Arbitrator with respect to this tenancy:

***I HEREBY ORDER THAT THE LANDLORD GET THE NECESSARY INSPECTIONS COMPLETED BY FEBRUARY 22, 2013 TO ALLOW THE TENANT TO RE-ENTER THE UNIT.***

***I HEREBY ORDER THAT THE LANDLORD ALLOW THE TENANT TO RETRIEVE HIS PROPERTY DURING THE WEEK OF FEBRUARY 22 TO 28, 2013 AND/OR TO CONTINUE THE TENANCY IF THE TENANT SO DESIRES.***

*I find the tenant entitled to a monetary order for \$1675 (enclosed) for the reasons outlined above.*

The landlord did not attend that hearing and maintained that he was neither advised of the hearing, nor has he received a copy of the decision issued on February 15, 2013.

I advised both parties that I could not interfere with or modify in any way the final and binding February 15, 2013 decision and Orders issued by the other Arbitrator. However, I confirmed the landlord's mailing address and committed to ensure that another copy of the February 15, 2013 decision is sent to the landlord by the Residential Tenancy Branch. I also noted that the issue before me is separate and distinct from the tenant's previous application.

#### Issues(s) to be Decided

Is the landlord entitled to an early end to this tenancy and an Order of Possession?

#### Background and Evidence

This tenancy began as a one-year fixed term tenancy on July 1, 2010. At the expiration of the initial term, the tenancy converted to a periodic tenancy. Current rent is set at \$900.00, payable in advance on the first of each month. The landlord continues to hold the tenant's security deposit of \$440.00, paid on June 12, 2010.

Both parties agreed that the tenant has been locked out of his rental unit since January 24, 2013 as a result of a "No Occupancy" order issued by the Bylaw Officer of the Planning and Development Services Section of the Municipality. This results from concerns as to the safety of chemicals left in the rental unit. The No Occupancy posting required that "a written report is to be submitted to the City from a certified hygienist establishing the suite is clear of all contamination/chemicals, etc.," before occupancy can be restored to the rental property.

The landlord testified that he has been diligently attempting to obtain an inspection of the premises to obtain the report requested by the municipality. However, he maintained that he has been unable to obtain that inspection due to the limited number of companies that conduct this type of work and their heavily booked schedules. He testified that he was hopeful that he would be able to obtain an inspection by mid-March 2013.

The tenant said that his primary interest at this point is to regain access to the rental unit so that he can retrieve his belongings and vacate the premises after cleaning the suite. He testified that he did enter the rental unit once since the municipal posting and was

given a \$100.00 fine by the municipal bylaw officer for ignoring the No Occupancy posting.

### Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing, the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to settle the landlord's application on the basis of the following final and binding terms:

1. The landlord agreed that the tenant will not be required to pay rent for March 2013 or subsequent months, until such time as the landlord has advised the tenant that the municipality has given approval to regain occupancy of the rental unit.
2. The tenant agreed to pay two weeks of pro-rated rent for the remaining portion of his tenancy (e.g., \$406.45 if during March 2013 – i.e.,  $14/31 \times \$900.00 = \$406.45$ ), to commence once the landlord notifies him that the municipality has lifted its "No Occupancy Order".
3. Both parties agreed that this tenancy will end by 1:00 p.m. on the 14<sup>th</sup> day after the landlord provides the tenant with telephone notice that the Bylaw Office of the Planning and Development Services Section of the Municipality has removed the "No Occupancy Order" for the rental unit, by which time the tenant will have vacated the rental premises.
4. Both parties agreed that this settlement agreement constituted a final and binding resolution of the landlord's application for an early end to this tenancy.

### Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue the attached Order of Possession to be used by the landlord **only** if the tenant does not vacate the rental premises in accordance with their agreement. The landlord is provided with these Orders in the above terms and the tenant must be served with this Order in the event that the tenant does not vacate the premises in accordance with their agreement. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: February 25, 2013

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Residential Tenancy Branch

