



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 365952 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, CNR, MNR, MNDC, ERP, RP, PSF, RR, FF

Introduction

This hearing was scheduled to deal with a tenant's application for: cancellation of a 1 Month Notice to End Tenancy for Cause and 10 Day Notices to End Tenancy for Unpaid rent; Orders for repairs, emergency repairs and for the landlord to provide services or facilities agreed upon; authorization to reduce rent payable; and a Monetary Order for cost of emergency repairs and damage or loss under the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

After filing this Application the landlord issued another Notice to End Tenancy to the tenants. The tenants provided a copy of the latest Notice to End Tenancy and I have amended the Application to include the most recent Notice to End Tenancy.

As the tenants had identified several issues under dispute on their Application I confirmed that the most urgent issue(s) involved the issuance of the Notices to End Tenancy and the majority of the hearing time dealt with whether the Notices should be cancelled or upheld. I was not presented evidence that there were outstanding emergency repairs and that issue was not pursued further.

For the reasons provided in this decision I found that the tenancy shall be ending in the very near future and I determined it unnecessary to further consider the tenants' requests for Orders for the landlord to make repairs or provide services or facilities; or, for authorization to reduce future rent payable.

The tenants' monetary claims against the landlord were severed from the Application pursuant to the Rules of Procedure as I did not find those claims sufficiently related to

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#RTB-136 (2011/07)



the issuance of the Notices to End Tenancy. Accordingly, the tenants are at liberty to file another Application for Dispute Resolution seeking monetary compensation from the landlord.

Issue(s) to be Decided

Should the 1 Month Notice to End Tenancy for Cause and 10 Day Notices to End Tenancy for Unpaid Rent be upheld or cancelled?

Background and Evidence

The tenancy commenced March 1, 2012. The tenants paid a security deposit of \$775.00. The tenants are required to pay rent of \$1,550.00 on the 1st day of every month under the terms of their tenancy agreement although the landlord has a practice of considering payments made between the 1st and 5th of the month as being “on time”.

The landlord has issued four Notices to end Tenancy to the tenants, as follows:

Issuance date	Type of Notice	Reason	Status
February 6, 2013	10 Day Notice	Unpaid rent of \$1,550.00 for February 2013	Nullified by full payment on February 11, 2013.
February 23, 2013	10 Day Notice	Unpaid rent of \$344.60 for November 2012	Under dispute
February 23, 2013	1 Month Notice	Repeated late payment of rent	Under dispute
March 2, 2013	10 Day Notice	Unpaid rent of \$1,550.00 for March 2013	Nullified by full payment on March 5, 2013.

Below, I provide the parties' respective positions concerning the two Notices to End Tenancy that remain under dispute.

10 Day Notice

On February 23, 2013 the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) indicating rent of \$344.60 was unpaid as of November 1, 2012.

The landlord's ledger shows that in November 2012 the tenants failed to pay rent of \$344.60. The majority of this amount related to an invoice the tenants had issued to the landlord on November 15, 2012 for a repair they made to the closet in their unit. I heard undisputed testimony that the landlord had not given express consent for the tenants to make this repair or to invoice the landlord for their efforts to repair it.

The tenants argued that they had implied consent to deduct costs for repairs they made from rent payable to the landlord. The tenants submitted that when they were the gardeners for the property until October 2012 and they were compensated \$200.00 per month by way of a deduction from rent and they had purchased gardening supplies at times for which the costs were deducted from rent. In addition, they were hired to paint a unit for an agreed upon price of \$800.00, which was also deducted from rent in September 2012.

The landlord acknowledged that deductions were made from rent payable when the tenants performed or purchased supplies with respect to the gardening services performed by the tenants at the property and the painting job the tenants performed with the landlord's prior agreement. The gardening and painting services were performed under specific contracts or agreements and did not form a basis for the tenants to take it upon themselves to perform other services at the property. The repairs made in the tenants' unit were not performed at the landlord's request or with the landlord's agreement that the tenants would be compensated.

1 Month Notice

The landlord served the tenants with a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) dated February 23, 2013 with a stated effective date of March 31, 2013. The reason for its issuance is that the tenants have been "repeated late paying rent".

The landlord submitted that the tenants have been late paying rent after taking into account the landlord's practice of considering rent on time up until the 5th of the month.

In reverse chronological order, I was presented undisputed evidence that the tenants had paid rent late, as follows:

February 2013:	paid February 11, 2013
January 2013:	paid in two instalments on January 29 and February 4, 2013
December 2012:	paid in two instalments on December 6 and December 7, 2012

November 2012: paid partial rent in two instalments on November 22 and November 26, 2012

Prior to November 2012 there were other late payments and cheques returned for insufficient funds; however, I found it unnecessary to consider those payments in making a decision as to whether the tenancy should end for repeated late payment of rent.

.End of Tenancy

During the hearing I informed the parties of my decision that there was sufficient basis to end the tenancy as of March 31, 2013 pursuant to the 1 Month Notice.

The tenants requested they be provided occupancy of the rental unit until April 30, 2013. Given the tenants' previous history of late or NSF rent cheques the landlord proposed, and the tenants agreed to the following:

1. The tenants shall pay the landlord \$1,550.00 plus rental arrears of \$344.60 by way of a money order or certified cheque no later than April 1, 2013 and in exchange the tenants shall be permitted use and occupancy of the unit until April 30, 2013.
2. The landlord shall be provided an Order of Possession effective April 30, 2013.
3. The landlord shall be provided an Order of Possession effective two (2) days after service which may be served upon the tenants if they fail to fulfill their agreement under part 1. of this mutual agreement.

Analysis

Under the Act, a tenant is required to pay the full amount of rent when due under their tenancy agreement. In this case, the tenancy agreement requires the tenants to pay rent on the 1st of every month; however, the landlord did not consider payments made by the 5th of the month to be late. Where a tenant repeatedly pays rent after the due date the landlord may end the tenancy by issuing a 1 Month Notice to End Tenancy. Residential Tenancy Policy Guidelines provide that a tenant who pays rent late three or more times is repeatedly late paying rent.

Based upon the undisputed evidence presented to me I find it undeniable that the tenants have repeatedly paid their rent late even after the landlord's practice to allow a five day grace period is taken into account. Therefore, I uphold the 1 Month Notice issued by the landlord on February 23, 2013 and find that this tenancy ends on the stated effective date of March 31, 2013.

As I have found the tenancy shall end March 31, 2013 pursuant to the 1 Month Notice, I find unnecessary to analyze the validity of the 10 Day Notice issued February 23, 2013. However, as the tenants were informed during the hearing, the Act limits the tenants' ability to withhold rent to very specific and limited circumstances. Where a tenant makes repairs to their unit, unless they meet the strict criteria of emergency repairs as provided under section 33 of the Act, such repair costs are not deductible from rent unless the tenant has the prior authority of the landlord or an Arbitrator delegated by the Director of the Residential Tenancy Branch.

As provided under section 63 of the Act, I have the authority to assist parties reach an agreement to resolve their dispute. I accept the agreement reached between the parties during the hearing with respect to providing the landlord with two Orders of Possession and I provide the landlord with the following Orders:

- I provide the landlord with an Order of Possession effective April 30, 2013 that may be served in at any time and in any event.
- I also provide the landlord with a conditional Order of Possession that is effective two days after service which may be served upon the tenants if the tenants do not pay the landlord pursuant to part 1. of their mutual agreement, as recorded in the Background section of this decision. For added clarity, this conditional Order of Possession may be served April 2, 2013, or later, if the tenants do not pay the landlord \$1,894.60 by the end of the day April 1, 2013 with a negotiable money order or certified cheque.

Conclusion

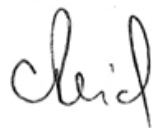
The tenants' request to cancel Notices to End Tenancy is dismissed and the tenancy shall end. The landlord has been provided an Order of Possession and a conditional Order of Possession pursuant to the agreement reached between the parties during the hearing that I have recorded in this decision.

I dismiss the tenants' requests for a rent reduction and Orders against the landlord with respect to performing repairs or providing services or facilities.

The tenants' monetary claims against the landlord have been severed from this application and the tenants have leave to make such claims by way of another Application for Dispute Resolution.

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: March 28, 2013



C. Reid, Arbitrator
Residential Tenancy Branch

Residential Tenancy Branch

Now that you have your decision...

All decisions are binding and both landlord and tenant are required to comply.

The RTB website (www.rto.gov.bc.ca) has information about:

- How and when to enforce an order of possession:
Fact Sheet RTB-103: *Landlord: Enforcing an Order of Possession*
- How and when to enforce a monetary order:
Fact Sheet RTB-108: *Enforcing a Monetary Order*
- How and when to have a decision or order corrected:
Fact Sheet RTB-111: *Correction of a Decision or Order*
- How and when to have a decision or order clarified:
Fact Sheet RTB-141: *Clarification of a Decision or Order*
- How and when to apply for the review of a decision:
Fact Sheet RTB-100: *Review Consideration of a Decision or Order* **(Please Note: Legislated deadlines apply)**

To personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Toll-free: 1-800-665-8779
- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at www.rto.gov.bc.ca
