



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

CNR, CNC, RP, LRE, LAT, AS, FF, SS

### Introduction

This hearing was held in response to the tenant's Application for Dispute Resolution in which the tenant has applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, to cancel a 1 Month Notice to End Tenancy for Cause, an Order the landlord make repairs, that conditions be set on the landlords right to enter the unit, that access be allowed by the tenant and guests, that the tenant be allowed to assign, an order for substitute service and return of the filing fee costs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing and to make submissions during the hearing.

### Preliminary Matters

The tenant did not supply the landlord with a copy of his 10 page evidence submission; that evidence was set aside and the tenant was at liberty to provide oral testimony.

The tenant did not submit a copy of the 10 Day Notice to End Tenancy. The landlord and tenant agreed on the content of a 10 Day Notice to End Tenancy for Unpaid Rent, issued on May 16, 2013. The parties agreed that a 1 Month Notice to End Tenancy for Cause was not issued.

The tenant indicated several matters of dispute on his application and confirmed that the main issue to deal with during this proceeding was the Notice to End Tenancy. For disputes to be combined on an application they must be related. Not all the claims on this application were sufficiently related to the main issue to be dealt with together. Therefore, I dealt with the tenant's request to cancel the Notice to End Tenancy for Unpaid Rent and I dismissed the balance of the tenant's claim with liberty to re-apply.

The tenant did not require an Order for substitute service

Issue(s) to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent issued on May 16, 2013 be cancelled?

Is the tenant entitled to filing fee costs?

Background and Evidence

The parties did not dispute that by May 17, 2013 the tenant received a 10 Day Notice to End Tenancy for Unpaid Rent, issued on May 16, 2013.

The Notice had an effective date of May 16, 2013.

The tenant did not apply to cancel the Notice until May 23, 2013. He was busy with doctor appointments.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$437.50 within five days after the tenant received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy is ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

The landlord said that \$187.50 was owed in April and \$250.00 owed in May, 2013.

The parties agreed that originally 2 females lived in the home and that at some point 1 of the females vacated and the male moved into the unit. There is a signed agreement, which the landlord said indicates that each tenant must pay \$350.00 per month rent, on the first day of each month. Another term of the tenancy requires a tenant to pay the full amount of rent, should 1 of the 2 vacate or fail to pay their share of the rent. A copy of the tenancy agreement was not supplied as evidence.

The tenant said that he disputed the Notice as he did not owe any rent for April; the parties agreed that the previous female occupant in fact owed the sum of \$187.50.

The landlord testified that the tenant only paid \$500.00 rent in May, plus a \$375.00 security deposit. The tenant said that he paid the full amount of rent owed on May 1, 2013, plus the deposit and that when the Notice was issued he did not owe any rent.

The landlord confirmed that he does not issue receipts when cash rent payments are made. There was no dispute that on June 1, 2013 the tenant paid June rent in the sum of \$750.00 and he was not given a receipt and that there was no discussion in relation to the continuation of the tenancy.

### Analysis

I find that the landlord has created a tenancy which he treats both as a tenancy-in-common and as a co-tenancy. Either both tenants owe rent and are jointly liable for the total amount owed, or they are tenants-in-common and each owes rent separately. However the landlord appears to have included a tenancy term that finds the tenancy is both a co-tenancy and tenant-in-common situation. When terms of a tenancy are unclear section 6 of the Act considers that term to be unenforceable.

When the landlord issued a 10 Day Notice to End Tenancy which included rent owed by a previous tenant, I find, pursuant to section 62(3) of the Act, that the Notice was sufficiently vague as to render that Notice unenforceable. The tenant was not required to dispute the Notice and I find the tenancy will continue until it is ended in accordance with the Act.

Therefore, even though the tenant disputed the Notice one day late I find that there was no need to dispute that Notice, as it included rent owed by a previous tenant.

As the landlord accepted a full rent payment from the tenant on June 1, 2013, I find that the landlord was confirming that the tenancy would continue. The effective date of the Notice would have corrected to May 27, 2013. Rent was accepted outside of the effective date of the Notice, which further confirms that the landlord intended to continue the tenancy. Even if the Notice had been of force, I would find that the Notice was waived when rent was accepted on June 1 and a receipt for use and occupancy was not issued.

From the evidence before me I find that this tenancy, as in all tenancies in British Columbia, will be bound by the schedule of terms found in the Residential Tenancy Regulation. A copy of the terms is appended after the conclusion of this decision.

Based on the testimony of the parties I find, pursuant to section 62(3) of the Act that rent is \$750.00 per month, due by the 1<sup>st</sup> day of each month, that the applicant is the tenant and that a deposit in the sum of \$355.00 has been paid.

Pursuant to section 26(2) of the Act, a landlord must issue a receipt for any cash rent payments. Therefore, pursuant to section 62(3) of the Act I Order the landlord to issue receipts for all cash rent payments. Further, I find that the tenant is entitled to make rent payments in another manner, chosen by the tenant that provides the tenant with a record of payment. For example, rent payment could be made via a money order or cheque.

The landlord has not made a claim for unpaid May 2013 rent and I have not made any determination in relation to what, if any rent may be owed for the month of May 2013. If the parties cannot come to an agreement in relation to May 2013 rent the matter can be decided at a future hearing based on evidence submissions and the testimony of the parties.

The tenant is not entitled to return of a filing fee.

### Conclusion

The Notice issued on May 16, 2013 is of no force and effect. The tenancy will continue until it is ended in accordance with the Act.

Orders and findings have been made in accordance with the Act. The parties are bound by the standard schedule of terms, appended below.

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: June 17, 2013

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Residential Tenancy Branch

### **Schedule**

[am. B.C. Reg. 234/2006, s. 22.]

#### ***Application of the Residential Tenancy Act***

- 1 (1) *The terms of this tenancy agreement and any changes or additions to the terms may not contradict or change any right or obligation under the Residential Tenancy Act or a regulation made under that Act, or any standard term. If a term of this tenancy agreement does contradict or change such a right, obligation or standard term, the term of the tenancy agreement is void.*
- (2) *Any change or addition to this tenancy agreement must be agreed to in writing and initialed by both the landlord and the tenant. If a change is not agreed to in writing, is not initialed by both the landlord and the tenant or is unconscionable, it is not enforceable.*
- (3) *The requirement for agreement under subsection (2) does not apply to the following:*
  - (a) *a rent increase given in accordance with the Residential Tenancy Act;*
  - (b) *a withdrawal of, or a restriction on, a service or facility in accordance with the Residential Tenancy Act;*
  - (c) *a term in respect of which a landlord or tenant has obtained an order of the director that the agreement of the other is not required.*

**Security deposit and pet damage deposit**

**2 (1) The landlord agrees**

- (a) that the security deposit and pet damage deposit must each not exceed one half of the monthly rent payable for the residential property,
- (b) to keep the security deposit and pet damage deposit during the tenancy and pay interest on it in accordance with the regulation, and
- (c) to repay the security deposit and pet damage deposit and interest to the tenant within 15 days of the end of the tenancy agreement, unless
  - (i) the tenant agrees in writing to allow the landlord to keep an amount as payment for unpaid rent or damage, or
  - (ii) the landlord makes an application for dispute resolution under the Residential Tenancy Act within 15 days of the end of the tenancy agreement to claim some or all of the security deposit or pet damage deposit.

**(2) The 15 day period starts on the later of**

- (a) the date the tenancy ends, or
- (b) the date the landlord receives the tenant's forwarding address in writing.

**(3) If a landlord does not comply with subsection (1), the landlord**

- (a) may not make a claim against the security deposit or pet damage deposit, and
- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both.

**(4) The tenant may agree to use the security deposit and interest as rent only if the landlord gives written consent.**

**Pets**

- 3 Any term in this tenancy agreement that prohibits, or restricts the size of, a pet or that governs the tenant's obligations regarding the keeping of a pet on the residential property is subject to the rights and restrictions under the Guide Animal Act.**

**Condition inspections**

- 4 (1) In accordance with sections 23 and 35 of the Act [condition inspections] and Part 3 of the regulation [condition inspections], the landlord and tenant must inspect the condition of the rental unit together**

- (a) when the tenant is entitled to possession,
- (b) when the tenant starts keeping a pet during the tenancy, if a condition inspection was not completed at the start of the tenancy, and
- (c) at the end of the tenancy.

**(2) The landlord and tenant may agree on a different day for the condition inspection.**

*(3) The right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not perform the landlord's obligations under sections 23 and 35 of the Residential Tenancy Act.*

*(4) A right of the tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if the tenant fails to perform the tenant's obligations under section 23 and 35 of the Residential Tenancy Act.*

### **Payment of rent**

**5** *(1) The tenant must pay the rent on time, unless the tenant is permitted under the Act to deduct from the rent. If the rent is unpaid, the landlord may issue a notice to end a tenancy to the tenant, which may take effect not earlier than 10 days after the date the tenant receives the notice.*

*(2) The landlord must not take away or make the tenant pay extra for a service or facility that is already included in the rent, unless a reduction is made under section 27 (2) of the Act.*

*(3) The landlord must give the tenant a receipt for rent paid in cash.*

*(4) The landlord must return to the tenant on or before the last day of the tenancy any post-dated cheques for rent that remain in the possession of the landlord. If the landlord does not have a forwarding address for the tenant and the tenant has vacated the premises without notice to the landlord, the landlord must forward any post-dated cheques for rent to the tenant when the tenant provides a forwarding address in writing.*

### **Rent increase**

**6** *(1) Once a year the landlord may increase the rent for the existing tenant. The landlord may only increase the rent 12 months after the date that the existing rent was established with the tenant or 12 months after the date of the last legal rent increase for the tenant, even if there is a new landlord or a new tenant by way of an assignment. The landlord must use the approved Notice of Rent Increase form available from any Residential Tenancy office or Government Agent.*

*(2) A landlord must give a tenant 3 whole months notice, in writing, of a rent increase.*

*[For example, if the rent is due on the 1st of the month and the tenant is given notice any time in January, including January 1st, there must be 3 whole months before the increase begins. In this example, the months are February, March and April, so the increase would begin on May 1st.]*

*(3) The landlord may increase the rent only in the amount set out by the regulation. If the tenant thinks the rent increase is more than is allowed by the regulation, the tenant may talk to the landlord or contact the Residential Tenancy office for assistance.*

*(4) Either the landlord or the tenant may obtain the percentage amount prescribed for a rent increase from the Residential Tenancy office.*

### **Assign or sublet**

**7** *(1) The tenant may assign or sublet the rental unit to another person with the written consent of the landlord. If this tenancy agreement is for a fixed length of 6 months or more, the landlord must not unreasonably withhold*

*consent. Under an assignment a new tenant must assume all of the rights and obligations under the existing tenancy agreement, at the same rent. The landlord must not charge a fee or receive a benefit, directly or indirectly, for giving this consent.*

*(2) If a landlord unreasonably withholds consent to assign or sublet or charges a fee, the tenant may make an application for dispute resolution under the Residential Tenancy Act.*

## **Repairs**

### **8 (1) Landlord's obligations:**

*(a) The landlord must provide and maintain the residential property in a reasonable state of decoration and repair, suitable for occupation by a tenant. The landlord must comply with health, safety and housing standards required by law.*

*(b) If the landlord is required to make a repair to comply with the above obligations, the tenant may discuss it with the landlord. If the landlord refuses to make the repair, the tenant may make an application for dispute resolution under the Residential Tenancy Act seeking an order of the director for the completion and costs of the repair*

### **(2) Tenant's obligations:**

*(a) The tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant must take the necessary steps to repair damage to the residential property caused by the actions or neglect of the tenant or a person permitted on the residential property by that tenant. The tenant is not responsible for repairs for reasonable wear and tear to the residential property.*

*(b) If the tenant does not comply with the above obligations within a reasonable time, the landlord may discuss the matter with the tenant and may make an application for dispute resolution under the Residential Tenancy Act seeking an order of the director for the cost of repairs, serve a notice to end a tenancy, or both.*

### **(3) Emergency repairs:**

*(a) The landlord must post and maintain in a conspicuous place on the residential property, or give to the tenant in writing, the name and telephone number of the designated contact person for emergency repairs.*

*(b) If emergency repairs are required, the tenant must make at least two attempts to telephone the designated contact person, and then give the landlord reasonable time to complete the repairs.*

(c) If the emergency repairs are still required, the tenant may undertake the repairs, and claim reimbursement from the landlord, provided a statement of account and receipts are given to the landlord. If the landlord does not reimburse the tenant as required, the tenant may deduct the cost from rent. The landlord may take over completion of the emergency repairs at any time.

(d) Emergency repairs must be urgent and necessary for the health and safety of persons or preservation or use of the residential property and are limited to repairing

- (i) major leaks in pipes or the roof,
- (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
- (iii) the primary heating system,
- (iv) damaged or defective locks that give access to a rental unit, or
- (v) the electrical systems.

### **Occupants and guests**

**9** (1) The landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit.

(2) The landlord must not impose restrictions on guests and must not require or accept any extra charge for daytime visits or overnight accommodation of guests.

(3) If the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end a tenancy. Disputes regarding the notice may be resolved by applying for dispute resolution under the Residential Tenancy Act.

### **Locks**

**10** (1) The landlord must not change locks or other means of access to residential property unless the landlord provides each tenant with new keys or other means of access to the residential property.

(2) The landlord must not change locks or other means of access to a rental unit unless the tenant agrees and is given new keys.

(3) The tenant must not change locks or other means of access to

(a) common areas of residential property, unless the landlord consents to the change, or

(b) his or her rental unit, unless the landlord agrees in writing to, or the director has ordered, the change.

### **Landlord's entry into rental unit**

**11** (1) For the duration of this tenancy agreement, the rental unit is the tenant's home and the tenant is entitled to quiet enjoyment, reasonable privacy, freedom from unreasonable disturbance, and exclusive use of the rental unit.

(2) The landlord may enter the rental unit only if one of the following applies:



(a) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant a written notice which states

(i) the purpose for entering, which must be reasonable, and

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant agrees otherwise;

(b) there is an emergency and the entry is necessary to protect life or property;

(c) the tenant gives the landlord permission to enter at the time of entry or not more than 30 days before the entry;

(d) the tenant has abandoned the rental unit;

(e) the landlord has an order of the director or of a court saying the landlord may enter the rental unit;

(f) the landlord is providing housekeeping or related services and the entry is for that purpose and at a reasonable time.

(3) The landlord may inspect the rental unit monthly in accordance with subsection (2) (a).

(4) If a landlord enters or is likely to enter the rental unit illegally, the tenant may make an application for dispute resolution under the Residential Tenancy Act seeking an order of the director to change the locks, keys or other means of access to the rental unit and prohibit the landlord from obtaining entry into the rental unit. At the end of the tenancy, the tenant must give the key to the rental unit to the landlord.

### **Ending the tenancy**

**12** (1) The tenant may end a monthly, weekly or other periodic tenancy by giving the landlord at least one month's written notice. A notice given the day before the rent is due in a given month ends the tenancy at the end of the following month.

[For example, if the tenant wants to move at the end of May, the tenant must make sure the landlord receives written notice on or before April 30th.]

(2) This notice must be in writing and must

(a) include the address of the rental unit,

(b) include the date the tenancy is to end,

(c) be signed and dated by the tenant, and

(d) include the specific grounds for ending the tenancy, if the tenant is ending a tenancy because the landlord has breached a material term of the tenancy.

(3) If this is a fixed term tenancy and the agreement does not require the tenant to vacate at the end of the tenancy, the agreement is renewed as a monthly tenancy on the same terms until the tenant gives notice to end a tenancy as required under the Residential Tenancy Act.

(4) The landlord may end the tenancy only for the reasons and only in the manner set out in the Residential Tenancy Act and the landlord must use

*the approved notice to end a tenancy form available from the Residential Tenancy office.*

*(5) The landlord and tenant may mutually agree in writing to end this tenancy agreement at any time.*

*(6) The tenant must vacate the residential property by 1 p.m. on the day the tenancy ends, unless the landlord and tenant otherwise agree.*

***Landlord to give tenancy agreement to tenant***

***13*** *The landlord must give the tenant a copy of this agreement promptly, and in any event within 21 days of entering into the agreement.*

***Dispute resolution***

***14*** *Either the tenant or the landlord has the right to make an application for dispute resolution, as provided under the Residential Tenancy Act.*

***Note:*** *this regulation repeals B.C. Regs. 161/2000, 264/98, 370/99, 125/2001 and 49/96.*

*[Provisions of the Residential Tenancy Act, S.B.C. 2002, c. 78, relevant to the enactment of this regulation: sections 97, 104 and 115]*