



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 0954780 BC Ltd. and Emerge Realty Corporation  
and [tenant name suppressed to protect privacy]

## **DECISION**

<u>Dispute Codes</u>	Landlord:	OPC and MND
	Tenant:	CNC

### Introduction

This hearing was convened on applications by both the landlord and the tenant.

By application of June 12, 2013, the landlord sought an Order of Possession pursuant to a one-month Notice to End Tenancy for cause served on May 25, 2013 and setting an end of tenancy date of July 1, 2013. The landlord also sought a Monetary Order for damage to the landlord's property.

By prior application of June 3, 2013, the tenant sought to have the Notice to End Tenancy for cause set aside.

### Issue(s) to be Decided

Should the Notice to End Tenancy be set aside or upheld? Is the landlord entitled to an Order of Possession and, if so, on what date, and is the landlord entitled to a Monetary Order?

### Background and Evidence

This tenancy began approximately 10 years ago under a previous owner who appeared at the hearing on behalf of the tenant. The tenancy was related to the tenant's employment with the landlord in which he received free rent and payment of \$10 per hour, normally in payments of \$200, one paid in the middle of the month and the other at the end of the month.

Matters leading to the present application arose when the landlord issued the tenant with a Notice to End Tenancy for end of employment which was actually served in the form of a two-month notice for landlord use much to the tenant's advantage. The landlord gave evidence that the landlord wish to replace the tenant as caretaker due to his previous irrational conduct and that of his girl friend which had included uttering death threats. The tenant had, without consent, moved his girl friend who had been barred from the rental building by the previous owner into the rental unit.

During the hearing, the landlord gave evidence that, on being served with the first notice to end tenancy, the tenant became angry, escalating when he was asked to return keys, etc. He was restrained by his girlfriend from making physical contact with staff and threatened to get his gun and shoot one of them in the head. His girlfriend attempted to bait a female staff member into a fight.

In another incident, the tenant's girl friend has assaulted another tenant and had damaged her door by hitting it with a hammer. In yet another fit of anger, the tenant had shattered his company issued cell phone by slamming it to the ground.

The landlord submitted verbatim transcripts of some 20 telephone calls to her from the tenant starting on May 25, 2013. The transcripts and other comments made by the tenant are riddled with vile profanity and threats against persons and the rental property.

These incidents have resulted in attendance by police officers on a number of occasions and the landlord has had to engaged a security officer.

During the hearing, the parties confirmed that they had arrived at a mutual agreement to end the tenancy. The landlord had agreed to pay the tenant \$500 in advance if he agreed to vacate the rental unit on June 27, 2013, the evening before the hearing.

The parties had also agreed that the landlord would pay the tenant a further \$500 when he returned the keys and was leaving the building.

The tenant accepted the \$500 but again failed to keep his promise to vacate the following morning with the explanation that he needed more assistance, although much of his property had been removed by a truck and trailer provided and paid for by the landlord. The move was then postponed to 6 p.m. the night of the hearing, but the tenant again declined to make a commitment to keep to that deadline.

The tenant was offered the opportunity treat the agreement as a mutual agreement to end the tenancy. He variously agreed and disagreed, and vacillated between being cooperative and demanding. The landlord had assured the mover that was to come at 6 p.m. that he would be paid (an amount the tenant stated was \$150) and the landlord would then give the remainder from the \$500 to the tenant.

However, with the tenant then took a position that the truck could not come until 6 p.m. He said he could not guarantee he would leave as promised and demanded his money by 8 p.m. when the bank closed.

### Analysis

There is no question that the landlord has submitted overwhelming evidence in support of her notice to end tenancy for cause including those causes listed under section 47(1)(d):

- (d) the tenant or a person permitted on the residential property by the tenant has
  - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
  - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
  - (iii) put the landlord's property at significant risk;

That finding would compel me to uphold the Notice to End Tenancy and issue the landlord with an Order of Possession to take effect at 1 p.m. on July 1, 2013.

However, I find that the tenant entered into a binding mutual agreement to end the tenancy on June 28, 2013 by accepting the \$500 payment from the landlord which he said he was unable to return.

Therefore, I find that the landlord is entitled to an Order of Possession to take effect at 8 p.m. on June 28, 2013. If the tenant fails to honor the order as counselled by his witness/advocate in order to burden the landlord with bailiff fees, the landlord would not be obliged to pay the additional \$500.

As the tenancy had not ended at the time of the hearing, I cannot consider the landlord's claim for damage to the landlord's property, but the landlord remains at liberty to make such application when the tenancy had ended.

### Conclusion

The tenant's application is dismissed without leave to reapply and the Notice to End Tenancy is upheld.

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 at 8 p.m. on June 28, 2013.

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 28, 2013

---

Residential Tenancy Branch