



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

CNC

### **Introduction**

This Hearing dealt with the Tenant's application cancel a *One Month Notice to End Tenancy for Unpaid Rent or Utilities* (the Notice) issued June 10, 2013.

The Tenant gave affirmed testimony at the Hearing

It was established that the Tenant duly served the Landlord with the Notice of Hearing documents on June 13, 2013, by registered mail. The Tenant provided the registered mail tracking numbers.

Despite being duly served, the Landlord did not sign into the teleconference and the Hearing continued in his absence.

### **Issue to be Decided**

Should the Notice be cancelled?

### **Background and Evidence**

The Landlord ticked off every box on the Notice. The Tenant denied all of the Landlord's allegations.

This is the seventh Hearing with respect to this tenancy. On February 19, 2013, repair orders were made. The Tenant stated that although, at the last Hearing, the Landlord was warned about the provisions of Section 94 of the Act, none of the repairs are done.

In addition, the Tenant stated that he has another Hearing to cancel another notice to end the tenancy on August 9, 2013. The Tenant submitted that the Landlord is

harassing him and stated that the Landlord entered the rental unit illegally on July 6, 2013, to change the locks.

### **Analysis**

When a tenant seeks to cancel a notice to end a tenancy, the onus is on the landlord to provide sufficient evidence that the tenancy should end for the reasons alleged on the notice. In this case, the Landlord provided no evidence and the Tenant denies the allegations. Therefore, I grant the Tenant's application to cancel the Notice.

I accept the Tenant's undisputed testimony in its entirety. **The Landlord is hereby warned about the provisions of Sections 28, 29, 30, 31, 32, 33 and 94 of the Act. This is the second warning with respect to Section 94. Copies of these sections are attached to this Decision.**

### **Conclusion**

**The Notice to End Tenancy is cancelled.** The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

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: July 15, 2013

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Residential Tenancy Branch

### **Protection of tenant's right to quiet enjoyment**

**28** A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance

with section 29 *[landlord's right to enter rental unit restricted]*;

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

### **Landlord's right to enter rental unit restricted**

**29** (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

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

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

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

### **Tenant's right of access protected**

**30** (1) A landlord must not unreasonably restrict access to residential property by

- (a) the tenant of a rental unit that is part of the residential property, or
- (b) a person permitted on the residential property by that tenant.

(2) A landlord must not unreasonably restrict access to residential property by

- (a) a candidate seeking election to the Parliament of Canada, the Legislative Assembly or an office in an election under the *Local Government Act*, the *School Act* or the *Vancouver Charter*, or

- (b) the authorized representative of such a person

who is canvassing electors or distributing election material.

### **Prohibitions on changes to locks and other access**

**31** (1) A landlord must not change locks or other means that give access to residential property unless the landlord provides each tenant with new keys or other means that give access to the residential property.

(1.1) A landlord must not change locks or other means of access to a rental unit unless

- (a) the tenant agrees to the change, and
- (b) the landlord provides the tenant with new keys or other means of access to the rental unit.

(2) A tenant must not change locks or other means that give access to common areas of residential property unless the landlord consents to the change.

(3) A tenant must not change a lock or other means that gives access to his or her rental unit unless the landlord agrees in writing to, or the director has ordered, the change.

## **Landlord and tenant obligations to repair and maintain**

**32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

## **Emergency repairs**

**33** (1) In this section, "**emergency repairs**" means repairs that are

(a) urgent,

(b) necessary for the health or safety of anyone or for the preservation or use of residential property, and

(c) made for the purpose of 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,
- (v) the electrical systems, or
- (vi) in prescribed circumstances, a rental unit or residential property.

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

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4) A landlord may take over completion of an emergency repair at any time.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

- (a) claims reimbursement for those amounts from the landlord, and
- (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

- (a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;

- (b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);
- (c) the amounts represent more than a reasonable cost for the repairs;
- (d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

### **Administrative penalties**

**94.1** (1) Subject to the regulations, the director may order a person to pay a monetary penalty if the director is satisfied on a balance of probabilities that the person has

- (a) contravened a provision of this Act or the regulations, or
- (b) failed to comply with a decision or order of the director.

(2) Before the director imposes an administrative penalty on a person, the director must

- (a) give the person an opportunity to be heard, and
- (b) consider all the following:
  - (i) previous enforcement actions for contraventions of a similar nature by the person;
  - (ii) the gravity and magnitude of the contravention;
  - (iii) the extent of the harm to others resulting from the contravention;
  - (iv) whether the contravention was repeated or continuous;
  - (v) whether the contravention was deliberate;
  - (vi) any economic benefit derived by the person from the contravention;

(vii) the person's efforts to correct the contravention.

(3) A penalty imposed under this section must be paid within the prescribed time.

(4) Instead of enforcing a penalty under subsection (1), the director, subject to the regulations, may enter into an agreement with the person who would otherwise be liable for the penalty.

(5) An agreement under subsection (4) may provide, in accordance with the regulations, for the reduction or cancellation of the penalty subject to the terms and conditions the director considers necessary or desirable.

(6) An agreement under subsection (4) must specify the time for performing the terms and conditions and, if the person fails to perform those terms and conditions by the date specified, the penalty ordered under subsection (1) is due and payable on the date of the failure.

(7) Neither the director's decision whether to enter into an agreement under subsection (4), nor the terms and conditions of such an agreement, may be the subject of an application for dispute resolution.

(8) If a corporation contravenes the Act or the regulations or fails to comply with a decision or order as described under subsection (1), an employee, officer, director or agent of the corporation who authorized, permitted or acquiesced in the contravention or failure is also liable under this section even though the corporation is liable for or pays a monetary penalty under this section.



