



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR

### Introduction

This application was brought by the tenant on July 11, 2013 seeking to have set aside a 10- day Notice to End Tenancy for unpaid rent served on July 6, 2013.

### Issue(s) to be Decided

Should the Notice to End Tenancy be set aside or upheld?

### Background and Evidence

This tenancy began on or about April 1, 2013 with the applicant's co-tenant, R.E.J. and another party. The applicant R.B.F moved in with the landlord's knowledge and consent, and thus became, a co-tenant, when the other party left.

Rent is \$450 per month and the landlord holds a security deposit of \$225 paid at the beginning of the tenancy.

During the hearing, the applicant noted that R.E.J. has been incarcerated at the time that the notice was received, but that he was released some two weeks ago but has shown no interest in returning to the rental unit.

The landlord stated that the Notice to End Tenancy of July 6, 2013 had been served when the tenants had failed to pay the \$450 rent that was due on July 1, 2013. In the interim, the applicant remains in the rental unit, the July rent remains unpaid and the tenants have not paid the rent due on August 1, 2013.

The tenant concurred that the rents for July and August 2013 have not been paid.

### Analysis

Section 26 of the *Act* provides that tenants must pay rent when it is due.

Section 46 of the *Act* provides that a landlord may issue a Notice to End Tenancy for unpaid rent on a day after the rent is due. The tenant may cancel the notice by paying the overdue rent or make application to dispute the notice within five days of receiving it.

In this instance, I find that while the tenant did make timely application to contest the notice of July 6, 2013, he agreed that the rent remains unpaid.

Therefore, I find that I cannot set the Notice to End Tenancy aside and must dismiss the tenant's application without leave to reapply..

On hearing that determination, the landlord requested an Order of Possession under section 55(1) of the *Act* which compels the issuance of the order on the landlord's oral request when an application to set aside a notice to end tenancy is dismissed and the notice is upheld.

Accordingly, I find that the landlord is entitled to an Order of Possession to take effect two days from service of it on the tenant.

The landlord remains at liberty to make application for a monetary award for the unpaid rent and any further losses as may be ascertained when he has regained possession of the rental unit.

### Conclusion

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 two days from service of it on the tenants.

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: August 14, 2013

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Residential Tenancy Branch